TRIAL, RIGHT

As well PEERS, as COMMONS

IN

IRELAND,

TO THE

Laws, *Statutes*, and *Tryals* by *Juries* of good and lawful men of *ENGLAND*, in the *King's Bench* at *Weſtminſter*, for *Treaſons* perpetrated by them in *IRELAND*, or any *Forreign Country* out of the Realm of *ENGLAND*.

BEING

An *Argument at Law* made in the *Court of King's Bench*, *Hill.* 20. *Caroli Regis*, in the Caſe of *Connor Magwire* an *Iriſh Baron* (a principal Contriver of the laſt *Iriſh Rebellion:*) Fully proving; That *Iriſh Peers*, as well as *Commons*, may be lawfully tried in this Court in *England*, by the Statute of 35 *Hen.* 8. *cap.* 2. for Treaſons committed by them in *Ireland*, by a *Middleſex Jury*, and outed of a Tryal by *Iriſh Peers*: Which was accordingly adjudged, and he thereupon Tryed, Condemned, Executed as a *Traytor*:

WHEREIN

Are compriſed many other Particulars, and notable Records, relating to the Laws, Peers, Statutes, Affairs of *Ireland*, not obvious in our *Law-Books*, and worthy Publick Knowledge.

By *William Prynne* Eſquire, late Bencher of *Lincolns-Inn.*

Numb. 35. 31, 33, *Ye ſhall take no ſatisfaction for the life of a* Murderer, *which is guilty of death; but he ſhall be ſurely put to death: So ye ſhall not pollute the Land wherein you are; for blood defileth the Land, and the Land cannot be cleanſed of the blood that is ſhed therein, but by the blood of him that ſhed it.*

London, Printed for *Edward Thomas*, at the *Adam* and *Eve* in *Little Brittain.* 1681.

As well Peers, as Commons

IN

IRELAND,

TO THE

TO THE
Ingenuous Readers,
ESPECIALLY
Professors, Students of the Laws *of* England, and *Ireland.*

HAving lately publiſhed a much enlarged *Edition* of my *Plea for the Lords and Houſe of Peers*, wherein the undoubted antient Birthright of all *Engliſh Lords and Barons to ſit, vote, and judge in all Parliaments of England, and their tryal by their Peers*, is irrefragably vindicated by *Hiſtories* and *Records* in all ages, and larger Diſcoveries made of the Proceedings and Judicature in our *Parliaments* in Caſes as well of *Commoners*, as *Peers*, than in all former *Treatiſes* whatſoever: I apprehended it neither *unſeaſonable*, nor *unprofitable* to publiſh this *Argument at Law*, concerning the *Trial of Iriſh Peers* for *forein Treaſons acted by them*, made by me near 14 years paſt in the *Kings bench Court at Weſtminſter*, in the Caſe of *Connor Magwire* an

Irish Baron, there indicted for *High Treason*, in having a principal hand in the late bloudy Rebellion in *Ireland*; against whom I was (by *special Order*) assigned *Counsel*, among others, by the *Parliament* then sitting; upon whose *Plea*, and a *Demurrer* thereunto, I first argued this *new point in Law*, never formerly disputed, adjudged in open Court; *Whether an Irish Peer, (or Commoner) committing Treason in Ireland, sent over from thence into England against his will, might be lawfully tryed for it in the Kings Bench at Westminster by a Middlesex Jury, and outed of his tryal by Irish Peers of his condition, by the Statute of* 35 *H.* 8. *c.* 2? After two solemn Arguments at the Bar, by my self, and Serjeant *Rolls* against, and Mr. *Hales*, and Mr. *Twisden* for the Prisoner; and Mr. *Justice Bacons* Argument on the Bench, his *Plea* was over-ruled, adjudged against him; it being resolved, *he might and ought to be tried only by a Jury of Middlesex, not by his Peers of Ireland*; Whereupon he pleading, *Not guilty, to his Indictment*, was tried by a *Substantial Jury* (to whom he took both his *peremptory* and *legal challenges*, which the Court allowed him of right), and after a very fair and full trial was *found guilty* by the *Jury*, upon most pregnant *evidence*; and then *condemned*, executed as a *Traytor* at *Tyburn*, as he well demerited.

The Reasons inducing me to publish this Argument were:

1. The near *affinity* and *cognation* it hath with my *Plea for the Lords*.

2ly. The *Novelty, Rarity* of the Subject and points debated in it, not formerly discussed at large in our Law-books.

3ly. The generality and publike concernment thereof, extending to all *Irish Subjects*, whether *Peers* or *Commons*, and so worthy their knowledge, perusal, and of all publike Officers in *Ireland*, especially *Lawyers*.

4ly. The

4ly. The prevention of *Misreports* of this case and *Argument*, in this age, wherein many *Arguments at Law*, and *Reports of Cases* have been lately published by *Indicious hands*, mistaking, mangling, or misreciting the *Reasons*, *Records*, *Lawbooks* cited both at *Barr* and *Bench*, and sometimes the *Cases*, *Iudgements* themselves; to the *prejudice*, *seduction of young Students of the Law*, and scandal of *the Law* it self.

5ly. The importunitie of some *Friends* who formerly desired Copies thereof from me, when I had no leisure to furnish them therewith.

6ly. The Vindication, declaration both of the Parliaments and *Kings Bench* honorable, resplendent, equal, untainted Justice against this Arch-Irish-*Traytor and Rebel*, and that in these particulars;

1. In trying this *notorious Offendor*, guiltie of the horridest, universallest *Treason* and *Rebellion* that ever brake forth in *Ireland*; and that in a time of open *War* both in *Ireland* and *England*, only by a *Legal Indictment, and indifferent sworn Jury of honest and lawful Freeholders*, according to the known Laws and Statutes of the Realm; not in a *Court Marshal*, or any other *New-minted Judicature*, by an arbitrarie, summarie, illegal or martial proceeding, without any lawful presentment, indictment or Trial by a *sworn, impartial, able Iury*, resolved, to be *diametrically contrary to the fundamental Laws, Customs, Great Charters, Statutes of the Realm, and inherent Liberty of the Subject, especially in time of Peace when all other Courts of Justice are open, and of very dangerous consequence, and thereupon specially prohibited, enacted against*; as you may read at leisure in the Statute of 5 R. 2. Parl. 1. ch. 5. Rot. Parl. n. 57. 2 R. 2. rot. Parl. n. 57. 1 H. 4. rot. Parl. n. 44. 2 H. 4. rot. Parl. n. 89. The Votes of the *House of Commons and Lords* against it, May 7. 1628. the *Petition of Right*, 3 *Caroli*, *Mr. Cambdens Annals of Qu. Elizabeth*, p. 242, 243. Cooks 3 Instit. p. 52. 124.

and accordingly declared by the *Commons House* in their (*a*) *Remonstrance of the State of the Kingdom*, 15 Decemb. 1641. and by the whole Parliament, and most now in power, in the case of the *Lord Mount-Norris*; whose trial and capital condemnation in a *Court Marshal* in *Ireland* by *Martial Law*, in time of peace, without a lawful Indictment and Trial by his Peers, in a summarie way, by the *Earl of Straffords* power, then *Lord Deputy of Ireland*, was one of the principal (*b*) *Charges*, evidences against him, to make good his general impeachment of *High Treason*, for which he was condemned and beheaded on *Tower hill* for a Traytor, by judgement and Act of Parliament; Namely, *That he had* TRAYTEROUSLY *endevoured* TO SUBVERT THE FUNDAMENTAL LAWS AND GOVERNMENT OF THE REALM, *and instead thereof* TO INTRODUCE AN ARBITRARY & TYRANNICAL GOVERNMENT AGAINST LAW: though this Lord was not executed or put to death by that Sentence against him; Which if executed, had been WILFULL MURDER both in his JUDGES & EXECUTIONERS, as Sir *Edward Cook* resolves in his 3. *Institutes*, p. 52. 124. printed by the *House of Commons special order*; and King *Alfred* long before him, who *hanged up no fewer than* 44 *of his Justices in one year AS MURDERERS, for condemning and executing some of his Subjects, WITHOUT A SWORN JURY of* 12. *men*; *and others of them for offences not Capital by the known Laws, or without pregnant evidence*: as Andrew Horn records in his *Myrrour des Justices*; ch. 5. p. 296, 297, 298: who thence infers; *Abusion est* (*de la Commen ley*) *que JUSTICES & lour MINISTRES que occient la gent per FAUX JUDGMENT, NE SONT DESTRUITS AL FOER DE AUTRES HOMICIDES, que fit le Roy Alfred, que FIST PENDRE* 44 *JUSTICES EN UN AN, TANT COME HOMICIDES pur lour FAUX*

(a) An Exact Collection, p. 8.

(b) See Straffords Impeachment & Tryal.

FAUX JUDGEMENTS, which others guilty of the like crimes (especially since these antient & *Straffords*, *Canterburies*, with the *Ship-mony-Judges*, late *Presidents*, *Impeachments*, *Sentences*, to the prejudice of the Subjects lives, estates,) may do well to ruminate upon.

2ly. In assigning this *Arch-Traytor* such learned Counsel as e desired, to advise and plead for him in this Case of High Treason in all matters of Law arising therein; which the *Parliament* likewise allowed to *Strafford* and *Canterbury*, though impeached of high Treason: and therfore cannot in * point of Justice be denied to any other person or persons in like Cases, if desired.

* 2 Stamf. l. 2. c. 63. 1 H. 7. f. 23.

3ly. In admitting him free liberty to put in a plea in writing to the manner of his Tryal, and to the *Iurisdiction* of the *Kings Bench* it self (though *the* (c) *highest Court of Justice* in all *England* but the *Parliament*, and having lawfull conusans of all sorts of Treasons whatsoever) and not peremptorily over-ruling, rejecting it forthwith, and giving judgement against him *pro confesso*, or as * *standing mute*, for not submitting to its Juridiction, and a Tryal by an ordinary *Middlesex Jury*, being a matter of Law and right; but permitting, yea ordering his *Plea* upon a *Demurrer* thereunto, to be publickly argued *pro & contra* at the Bar by *Counsel*, and then solemnly argued at the Bench by the *Judge*, before it was over-ruled (being a Case of general concernment) to satisfie him and all the world of the legality and Justice of his Tryal. And then permitting him according to Law, to plead *not guilty*, and put himself upon his Tryal by the Country; not sentencing him to death for Treason without any Tryal or good evidence produced to convict him.

(c) Cooks 4 Instit. c. 6.

* Stamf. l. 2. c. 60.

4ly. In allowing him a free honorable Tryal upon an Indictment, first found upon Oath by the *grand Jury*, & then suffering him to take not only his particular chalengesby the poll to every of the Jurors returned,

upon

upon a *voyre dire* (not formerly heard of, yet allowed him, as reasonable, to take away all coulor of *partiality* or *non indifferency in the Jurors*) *Whereupon* every *Jury-man* was examined before he was sworn of the Jury: *Whether he had contributed or advanced any monies upon the Propositions for* Ireland, or *was to have any share in the Rebels Lands* in Ireland *by Act of Parliament or otherwise?* But likewise in permitting him to take his *peremptory challenge* to 35 *of the* 2 *Juries returned*, without any particular cause alleged; which Liberty (d) *our Laws* allowing men *in favorem vitæ*, and because there *may be private causes of just exceptions to them known to the Prisoner, not fit to be revealed, or for which he wants present proof*, and that in Cases of High-Treason as well as of *Felony*, the *Court* thought just and equal to allow the same to him, though a *notorious Irish Rebel*. Wherefore it ought much more to be allowed to all *English Freemen* lesse peccant, and not so notoriously guilty as this *transcendent Traytor*; *the debarring the party indicted of his lawfull challenges, being to debar him of* a principal *matter concerning his Tryal*, yea a means to take away his life *without just cause or guilt*; much more then a *Tryal* by such *Jurors*, *Committees*, *Commissioners* or other *Judges* nominated by persons interessed, or parties, without the *denomination* or *direction of sworn Officers of Justice alone, against the course of the Common-law*, as the Statute of 11 *H.* 4. *c.* 9. and *Cooks* 3 *Instit. p.* 32, 33. resolve.

(d) Cooks 3 Inst. p. 27. Stamf. Pleas of the Crown l. 3. c. 7. 32 H. 6. f. 26. 14 H. 7. f. 19. Brook chal. 86, 211, 217.

In this Argument the *Readers* (especially *Irish Students of the Law* may take notice; First, of some observable *passages* and * *Records* touching the setling of the *Laws* and *Great Charter* of *England* in *Ireland*, the endenization of Irish-Natives to make them capable of the Laws and Liberties of the English there; the *Statutes*, Peers of *Ireland*, and the *Tryal* of Peers there for Treasons, not obvious in other *Law-Books*; to which I at first intended to have added an *Appen-*

* Page 32 to 9. 42 to 49, 38, 59, 63, 68, 59.

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dix of the moſt remarkable paſſages in our *Hiſtories*, and chiefeſt *Records* in the *Tower* relating to the *Soveraign Juriſdiction* of the *Kings and Parliaments of England* over *Ireland*, and to the *Parliaments*, *Officers*, *Government*, *and affairs thereof*, not hitherto publiſhed, and unknown to moſt, of very neceſſary and excellent uſe. Which being over-large for an *Appendix*, I muſt reſerve for a *particular Treatiſe* by themſelves; or joyned with ſome other *Records* and *Hiſtories* relating unto *Scotland*, moſt worthy of *publick view*, if God ſend health and opportunity to communicate them to poſterity. Only I ſhall here inſert one pertinent *Record* to manifeſt, that the trying of *Iriſh Malefactors* in *England*, the binding them to appear, the recording their defaults, and giving judgement againſt them for not appearing here for Murders, Robberies, and Felonies committed or acted by them in *Ireland*, is no Novelty (having omitted it in my Argument) it being in uſe in the ninth year of *King John*, as this *Patent* manifeſts.

(e) *Rex* M. filio Henrici, *Juſticiario* Hiberniæ *ſalutem. Mandamus vobis quod deduci faciatis ſecundum judicium Comitis* Dublin, Galfredum de Mariſco *& alios qui rectati ſunt de incendio & roberia & morte hominum, & aliis rectis quæ pertinent ad Coronam noſtram*, **unde eis dies datus eſt coram nobis in Anglia a die ſancti Michaelis ad 15 dies, ad quem non venerunt nec pro ſe reſponſales miſerunt, et abſentiam ſuam die illo Attornatis eis in defaltam** *Et ipſos deduci faciatis ſecundum judicium prædicti* Comitis **de vita et membris, et obſidibus, et vadiis, et plegiis.** *Teſte meipſo apud* Theoukesbury, 12 *die* Novembris. (e) Rot. Pat. An. 9. Iohan. Reg. m. 4. n. 46.

2ly. The Readers may herein diſcern the Treacheries, *Conſpiracies*, *Inſurrections*, Rebellions of the *Native Iriſh* in all Ages *ſince their ſubmiſsion to King Henry the* 2d. Anno 1171. and their *ſwearing of fealty to him and his Heirs, for ever as to their lawfull*

Kings and Lords, recorded at large in our (k) *Historians*, towards our *Kings* and English Nation, and their frequent endeavours utterly to cast off their Dominion, and extirpate them out of *Ireland*, which is notably expressed in many of our Records, as Claus. 5 E. 3. part 2. m. 12. dorso. Pat. 5 E. 3. pars 1. m. 25. Cl. 35 E. 3. m. 36. Claus. 36. E. 3. m. 42. dors. & Claus. 42 E. 3. m. 6. & dors. 13, Whence *Giraldus Cambrensis* (who went along into *Ireland* with King *Henry* the 2d. and with his son *John*, when made King thereof by his Father, who made the first and fullest description of it, and its Conquest, and of the manners, qualities of the Irish; of any of our *Historians*) gives this Character of them and their deportment towards the English in that age; (l) *Præ omni alia gente Proditionibus semper insistunt; fidem datam nemini servant, fidei et Sacramenti Religionem quam sibi semper servari summopere volunt, aliis præstitam quotidie violare nec verecundantur, nec verentur: unde et cum cautelas omnes observaveris & adhibueris, cum securitati & indemnitati tuæ tam Sacramentis et obsidibus, quàm amicitiis firmiter junctis, & beneficiis multimodè collatis, modis omnibus invigelaveris, tunc primo timendum est tibi: quia tunc præcipuè ipsorum vigilat malitia, cum ex securitatis abundantia te tibi præsenserint non invigilare: Tum demum ad arcem nequitiæ, tum ad assueta fallacia tela confugiunt, ut sumpta securitatis occasione lædere valeant vel improvisum.* He subjoins. "Inter alia multa artis iniquæ figmenta, hoc "unum habent tanquam præcipuum argumentum: "(*and ô that too many English as well as Irish were not "guilty of this transcendent Treachery and Hypocrisie!*) "Sub religionis et pacis obtentu ad sacrum aliquem "locum conveniunt cum eo quem opperere cupiunt: "primo compaternatis fœdera jungunt: Dein- "de ter circa Ecclesiam se invicem portant; post- "modum ecclesiam intrantes coram altari reliquiis "Sanctorum, sacramentis multifarie præstitis, de- "mum missæ celebratione, et orationibus Sanctorum "sacer-

(k) Hoveden, Annal. pars post. p. 527, 528, 529. Giraldus Cambrensis, Hybernia Expugnata, l. 1. & 2. Chron. Johan. Bromton, col. 1069, 1070, 1071. Mat. Westm. & Mar. Paris, An. 1171, 1172. & others

(l) Typographia Hybernia, c. 20, 22, 24.

" ſacerdotum tanquam diſpenſatione quadam, indiſſo-
" lubiliter fœderantur. Ad ultimum vero ad majo-
" rem amicitiæ confirmationem, et quaſi negotii con-
" ſummationem ſanguinẽ ſponte ad hoc fuſum, uterque
" alterius bibit. Hoc autem de ritu Gentilium ad-
" huc habent, qui ſanguinem in firmandis fœderibus
" uti ſolent. *O quoties in ipſo deſponſationis hujus arti-culo A VIRIS SANGUINUM ET DOLOSIS, tam doloſe & inique funditur ſanguis, ut alteruter penitus maneat exanguis! O quoties eadem hora et in continenti, vel ſequitur, vel prævenit, vel etiam inaudito more ſanguinolentum divortium ipſum interumpit deſponſationem!* " Adeo
" proditionis peſtis hîc invaluit et quaſi radices po-
" uit, adeo in naturam converti prævalet pravæ con-
" ſuetudinis longus abuſus, adeo a convictu mores for-
" mantur, et qui tangit picem coninquinabitur ab ea,
" adeo mali vis magna eſt, quod etiam advenæ eodem
" vitio inquinati ſunt." He adds in another place, (m) *Ad reſiſtendum Anglis, et antiquæ libertatis ſub capitum diſcrimine jura tuendum, unanimi voto conſpirant. Et ut hunc plenius affectum deducere poſſint ad effectum, vinctis undique fœderibus, de novo fiunt ex hinc amici qui antea fuerunt inimici.* All which we find verified of them in this laſt rebellion and maſſacre of the Engliſh, for which this priſoner was indicted and executed: So as we may well conclude of the Iriſh in his enſuing words. (n) *Nationis ſubdolæ longè fortius timenda eſt* ars, *quam* Mars; pax, *quam* fax; mel, *quam* fel; ma-
litia, *quam* militia; proditio, *quam* expeditio; ami-
citia præfucata, *quam* inimicitia deſpicata.

(m) Hybernia Expugnata, l. 2. c. 25. p. 808.

(n) Hybernia Expug. c. 97.

3ly. The Readers may here in part diſcern, by whom, and in what manner the Laws of *England* were firſt eſtabliſhed in *Ireland*, and how farr, and to what perſons there: to which I ſhall add this paſſage of (o) *Mat. Paris*, An. 1172. touching K. *Henry* the 2. his ſet-
ling our Laws there. *Rex Pater antequam ab* Hyber-
nia *rediret apud* Liſſemor *Concilium congregavit*, **Ubi Leges Angliæ ab omnibus ſunt gratanter acceptæ,**

(o) Hiſt. Ang. Edit. Lond. 1640. p. 126.

et juratoria cautione præstita, confirmatæ. With that of (p) *Sylvester Giraldus*, who reciting the *Constitutions* made at the *Council of Cassils* in *Ireland* under this King *Henry* for the Government of the Church, and reformation of the manners of the Irish, there recorded at large, concludes thus. *Itaque omnia divina ad instar sacrosanctæ Ecclesiæ* **Juxta quod Anglicana observat Ecclesia in omnibus partibus Hyberniæ** *amodo tractantur. Dignum etenim & justissimum est, ut sicut Dominium et Regem ex Anglia, sortita est divinitus Hybernia, sic etiam EXINDE vivendi formam recipiant meliorem. Ipsi namque Regi magnifico* **tam Ecclesia quam Regnum Hyberniæ** *debent, quicquid de bono pacis, et incremento Religionis hactenus est assecuta.* After which the Irish rebelling, and casting off the English Laws, (q) *King John* Anno Dom. 1211. arriving at *Dublin* with a great Army; *Occurrerunt ei ibidem plusquam viginti Reguli illius Regionis, qui omnes timore maximo perterriti, homagium illi & fidelitatem fecerunt: Fecit quoque Rex* **ibidem construere Leges et Consuetudines Anglicanas, ponens Vicecomites et alios Ministros qui populum Regni illius juxta Leges Anglicanas judicarent,** (to wit, (r) in the *English Pale*, and territories reduced into Counties, and under the Kings dominion) as *Matthew Paris* and others story.

(p) Hybern. Expug. l. 1. c. 34.

(q) Mat. Paris Hist. Angl. p. 230. Hen. de Knyghton de Event. Angl. l. 2. c. 15. col. 2420.

(r) Sir Iohn Davis his Irish Reports, p. 37, 38.

Fourthly, the Readers and our whole Nation may hereby and herein discover, for their present and future information, the provident care and prudence of our *English Parliaments* in all former ages, to secure the lives and inheritances of all *English Freemen* and *Irish Subjects* against all arbitrary, tyrannical Power and proceedings whatsoever, even in cases of pretended or real Treasons, and the highest capital offences, by providing and enacting from time to time, that not only all *English Freemen, but all other Irish* or outlandish *persons* accused of any High Treasons, misprisions

or

or conceaiments of Treasons committed by them either within or without the Realm of *Engl.* should be impeached of, and arraigned for the same, only *upon a legal Presentment or Indictment first found against them by a Jury of good and lawful men upon their oathes; and after that tried for the same by another legal Jury of* 12. *honest and substantial indifferent Freeholders upon their Oathes, or by the lawful judgement of their Peers* (if English Peers) *and not forjudged of life or limb, nor outlawed, exiled, put to death passed upon, or any way destroyed, but* **only by the lawfull judgement of their Peers, according to the due course of the Common Law, and not otherwise,** as the *Grand Charter of King Iohn*, the statute of *Magna Charta*, ch. 29. in 9 H.3. 25 E.1.c.1. 28 E.1. c.1. 5 E. 3.c.9. 20 E. 3.c. 2. 25 E.3.c. 2. of Treasons, 28 E.3. c.3. 42 E.3.c.3. 2R.2.rot.Parl.n.57. 1 H.4.rot.Parl.n.44. 2H.4.n.60,89. 2 H. 5.c.6. 20 H. 6.c.9. 22 H.8.c.9. 23 H. 8.c.13. 26 H.8.c.13. 28H.8.c. 7, 10, 18. 31 H.8.c.8.14. 32 H.8. c.4, 35. 33 H.8.c. 12. 20, 21, 23. 35 H.8. c. 2, 3. 1 E.6.c. 12. 5. E. 6. c. 11. 1 Mar. c. 6. 1 & 2 Phil. & Mar. c. 10, 11. 1 Eliz.c. 1.6. 5 El.c.1. 13 El.c.1. 14 El. c. 1. 18 El.c.1. 23 El. c.1. 27 El.c.2. 3 Jac.c.1. *the Pitition of right* 3. *Caroli*, with sundry other Statutes enact, and (f) *all our Law books* resolve: so that no mans life whatsoever can legally be hazarded or taken away for any real or pretended Treason or capital crime, without a double Jury, & the verdicts of 24 sworn good honest men at the least, or more, or by a *Grand Jury*, and 12 or more Peers of the Realm, if an English Peer; and in case of Forrainers, by a Jury of 6. English, and 6. of their own Countrey-men (if so many may be found fit to be returned of a Jury) to avoid partiality: which seconded must be with the Judgement of one or more sworn Judges setting on the Tribunal of Justice. Which treble Bulwork and grand fundament Security of all English Freemens and others lives, Inheritances, Fami-

(f) Stamfords plees of the Corone, l.3.c. 1. to 8. Cooks 2 Instit. p. 48. to 53. 3 Instit. c. 1, 2. Brook, Fitzh. Statham, Assh. tit. Coron. Trial, Treason.

Families, Estates, against all unlawfull Conspiracies, Practises, Combinations, subordinations of Witnesses, machiavilian Policies, and arbi rary tyrannical Powers, proceedings whatsoever, especially in perilous treacherous times, if once undermined, subverted, or interrupted by arbitrary Courts-Martial, Committees, or any other new erected Tribunals, by what names or specious pretences whatsoever of publick safety, danger, or necessity, what sad effects it would soon produce to the endangering, yea losse of the Lives, Inheritances, Fortunes of the most innocent, best-deserving Persons, and real Patriots of their Countries Laws and Liberties, through the power, policy, confederacy, covetousnesse, ambition, reveng, malice, emulation, suspition, tyranny, injustice, partiality, self-interests of suborned, perjured Witnesses, or despitefull, powerfull Prosecutors, Accusers, and of unrighteous packed, partial præ-ingaged Judges, (admitting no legal Pleas against their exorbitant Jurisdictions, no legal challenges to their persons, nor appeals from their unjust sentences, though capital, without any clear testimony to prove them guilty and worthy of death by our known Laws) all Lovers of their own Families, Friends, Neighbours, Liberties, Li es, Estates, or the publick safety, may easily resolve, not only from sundry *experiments* and (t) *Histories* in former and late ages over-tedious to recite; but by the memorable Presidents of innocent *Naboth* recorded for this purpose in sacred Writ. 1 *King.* 21. and of the Propher *Zechariah*, 2 Chron. 24. 20, 21. 22. compared with that of Psal. 94. 20, 21. *shall the Throne of iniquity have fellowship with thee* **which frameth mischief by a Law?** *They gather themselves together against* **the Soul (or Life) of the Righteous and condemn the innocent Blood**: with Ezech. 22. 6, 9. 12, 27. & Hay 59. 6, 7. *Behold the* Princes of *Israel*, **every one were in**

(t) See Sir Walter Rawlegh his Preface to the History of the World, D. Beards Theatre of Gods Iudgements on the 6th. Commandement.

in thee to their power to shed blood. In thee have they taken Gifts to shed blood. Her Princes in the midest thereof are like Wolves ravening the prey. **To shed Blood and to destroy Souls** (that is the (*u*) lives of innocent men under a pretence of Law, Justice for pretended crimes, Treasons) **to get dishonest gain:** *their wayes are wayes of iniquity, the Act of* VIOLENCE *is in their hands; their feet run to evil,* and they **make hast to shed innocent blood:** *their thoughts are thoughts of iniquity: wasting and destruction are in their paths, there is* **no Judgement** (or Justice) *in their goings, they have made them crooked paths:* Parallel'd with Jer. 22. 17. *But thine eyes and thine heart* **are not but for thy covetousness, and for to shed innocent blood, and for oppression and violence to do it.** Such Monsters of Injustice, rapine, oppression, violence, against all Laws of God and Man, do Kings, Princes, and great men degerate into even among Gods own people, when they break down the Pales and Fences of publique Laws and Justice made for their Subjects preservation, and let loose the reines to arbitrary government, and lawless proceedings, to shed their blood, or confiscate their Estates, supplant, and ruine their posterity in a seeming way of Justice. The consideration of which sacred Texts and Presidents should both caution and engage all future English Parliaments, the whole Nation, and every individual member thereof, for ever to abandon and abominate such irregular Judicatures and extravagant proceedings, and not to give the least countenance or incouragement thereunto, especially after this memorable President of the Lord *Magwire*, and our many years late contest in Parliament and bloody encounters in the field, to *maintain the fundamental Laws, Priviledges, and good Customes of this Kingdome* (whereof the Tryal of men by a lawfull Indictment, Jury, and verdict

(u) See Lyra, Tostatus, Lavater, Polanus, Maldonat, Cornelius a Lapide Junius, and otherson these Texts.

dict of their Peers, is the principall) whereby not only the *Supreame authority, but the peoples security of lives, Lands, Livings, and Priviledges (both in generall and particular) are preserved and maintained, and by abolishing or alteration of the which, it is impossible but that present confusion will fall upon the whole state and frame of this Kingdome*; as *King James* himself, and the whole Parliament long since resolved in the Act of 1 *Iacob.* ch. 2. and *without the full possession of which fundamental Rights, Laws and liberties, we can have little hopes, (as to humane Considerations)* **to enjoy anie comfort of life, or so much as life it self, but at the pleasures of some men, ruling meerlie by will and power**; as the *Generall, Officers, and Army themselves* have long since published and declared to the Parliament and world, in expres words, in their (*x*) *Declaration and Representation humbly tendred to the Parliament*, concerning THE JUST & FUNDAMENTAL RIGHTS & LIBERTIES OF THEMSELVES & THE KINGDOME. Iune 14. 1657. which they may do well to remember and pursue: In prosecution whereof, in the *Heads of Proposals agreed upon by his Excellency and the Councel of the Army, to be tendred to the Commissioners of* Parliament *residing with the Army; containing the particulars of* THEIR DESIRES *in pursuance of their former Declarations and* Papers, August 1. 1647. Proposal. 10. they desired, *That the Rights of the Commons of* England *might be cleared, as to* A DUE EXEMPTION *from any Judgment, Tryal, or other Proceedings against them by the House of Peers, without the concurring Judgement of the House of Commons. As also* FROM ANY OTHER JUDGEMENT, SENTENCE, OR PROCEEDING AGAINST THEM OTHER THAN BY THEIR EQUALS, OR ACCORDING TO THE LAW OF THE LAND. Which how inconsistent

(x) A Declaration of the Armies engagements, &c. p. 36, 37. 112, 114.

consistent it is with all Military and summary proceedings in all new Courts, Committees, or Commissions since erected, I refer to their own Consciences and Iudgements to resolve.

5ly. The Readers may hereby discern, that *Errors* themselves in the *Courts of Ireland*, with other *grievances* could not antiently be redressed in the Parliaments thereof, *but* * *only in England*, till 29 E. 3. as is evident by this memorable hitherto unprinted *Record* made for relief in such Cases.

* See here p. 19. Crooks 1. Rep. m. 14 Car. p. 511, 512.

* Clauſ 39 E. 3. m. 12. De erroribus corrigendis in Parliamentis tenendis in Hibernia.

* Rex *Justiciario & Cancellario suis* Hiberniæ, *salutem. Ex parte nonnullorum fidelium nostrorum Communitatis terræ nostræ* Hiberniæ, *Nobis est graviter conquærendo monstratum, ut cum ipsi dampna & gravamina quamplurima à magno tempore sustinuerint ex hoc, quod ipsi terras & tenementa sua in manum nostram per Ministros nostros, terræ prædictæ, cum nomine districtionis, cum ex causa transgressionis, sive alienationis sine licentia nostra factæ, voluntariè & absque causa rationabili capta, extra manus nostras, licet ritè & processu debito inde penes vos & alios de Consilio nostro in partibus illis,* juxta *legem & consuetudinem* terræ *prædictæ* prosecuti fuissent * recuperare non possunt. *Et eviam ex hoc,* quod ERRORES qui in Recordis & Processibus placitorum coram Justiciariis nostris & aliis Curiis & Placiis in eadem terra, quæ Recordum habent, habitis, & in redditionibus judiciorum & placitorum eorundem interveniſſe prætendantur **in Parliamentis in eadem terra corrigi neqeunt, nec alias justicia inde fieri sine remedio in Anglia querendo**; *propter quod, quidam propter labores & expensas circa præmissa oppositas* ad maximam *miseriam & inopiam deducuntur, & quidam omnino exhæredati existunt; unde iidem fideles nostri Nobis cum instancia supplicarunt, ut super præmissis remedium congruum apponi faciamus.* Et quia videtur Nobis & Consilio nostro **durum esse et grave**, quod conquærentes super assecutione Justiciæ de iniuriis

* See Pat. 8. Johan. Regis, m. 1, 2. Pat. 9. Iohan. Reg. m. 4. n. 26.

Nota.

ibi illatis in partibus prædictis, taliter absque remedio fatigerentur; *per quod pro quiete, et indempnitate populi nostri in terra prædicta sub nostro regimine existentis, cui in exhibitione Iusticiæ tumus debitores;* **ordinavimus,** *quod de omnibus terris & tenementis in terra prædicta per Justiciarios, Escaetores, seu quoscunque alios Ministros nostros sub Sigillo nostro in manum nostram captis, illis qui pro eisdem terris & tenementis extra manum nostram debito & justo processu coram vobis prosequi voluerint super hoc plena Justicia* **secundum legem et consuetudinem terræ nostræ Angliæ, et dictæ terræ nostræ Hiberniæ fiat,** *quibuscunque mandatis nostris* * *sub magno vel privato sigillo nostro* Angliæ, *vobis aut aliis Ministris in terra prædicta ante hæc tempora directis, non obstantibus. Et quod ad prosecutionem omnium & singulorum qui conqueri voluerint* **errores in recordis vel processibus** *coram aliquibus Justiciariis seu aliis Ministris prædictis intervenisse. Rotuli eorundem Recordorum & Processuum* **in Parliamentis nostris in eadem terra tenendis,** *per Justiciarios seu Ministros, coram quibus Recorda & Processus illa fuerint, deferantur,* **et ibidem eadem Recorda et Processus diligenter recitentur et examinentur, et errores si quos in eisdem inveniri contigerit, debite corrigantur. Et ideo** *Vobis mandamus, quod* **Ordinationem** *prædictam in terra nostra prædicta teneri, & partibus conquærentibus plenam & celerem Justiciam fieri faciatis in forma predicta, quibuscunque mandatis vobis aut aliis in terra prædicta ante hæc tempora in contrarium directis, nonobstantibus. Ita quod aliquis materiam non habeat Nobis pro defectu Justiciæ, super casibus prædictis, de cætero conquærendi. Teste Rege apud Westm. 30 die Augusti.* Per ipsum **Regem et Consilium**

* See 2 E. 3. c. 8. 18 E. 3. Star. 3. 20 E. 3. c 1, 2 Clauſ. 5. E. 3. part 1. m. 27. 1 R. 2. n. 96. 2 R. 2. n. 51. Clauſ. 20 E. 3. part 1. dorſ. 13.

If then the King and his Counsel in *England* might thus by this their *Ordinance* made in *England*, without a Parliament, redress these grievances and faylors of Justice in cases only of private concernment in *Ireland*

land it self, formerly examinable and remediable only in *England*, for the ease and benefit of the loyal Subjects (not of Irish Enemies, and Rebels) there; much more may the King and Parliament of *England* for the preservation of the Kings Crown, interest, and of the lives, inheritances of all his loyal Subjects there, and securing the peace of *Ireland*, enact and ordain, that all Irish Rebels, Traytors, committing, *High Treason*, and taking up *Arms* against the King, and destroying his Liege people there (especially in times of universal Rebellions and Insurrections) shall be sent over thence, and tryed for the same in *England*, by a sworn Jury of lawfull indifferent *Englishmen* in the Kings *Bench*, be they *Commons* or *Peers* of *Ireland*, without any injury or injustice.

Thus submitting this Argument to the *candid censure*, *and friendly embracement* of every judicious Reader, and craving a share in his Prayers for Gods gracious blessing both on me and it, I leave it to the Readers immediate perusal without further Prologue.

From my Study in Lincolns-Inne June 19. 1658. *on which day of the* Month 1637. *I was taken* * Pro confesso *by the* Star-Chamber Lords *upon a pretended* contempt, *in* REFUSING TO ANSWER; when as *themselves refused to give me leave* to plead, or answer, *and rejected the* Answers tendred in Court *under my own and my Councels hand, to the Information there exhibited, against all Rules of* Law, Iustice, *and of that very Court.*

* A new Discovery of the Prelates tyranny, p. 5. 37. 122. 147.

William Pryn.

THE ARGVMENT OF *WILLIAM PRYNNE* of Lincolns-Inne, Esq;

Hill. 20 Car. Banc. Regis.

IN THE

Case of the Lord *Cannor Magwire Baron of Inskellin* in *Ireland* (the chief contriver of the late *Irish Rebellion* and Massacre of the Protestant English) against whom he was assigned Councell by *both houses* of *Parliament.*

Connor Magwire, by the name of Connor Magwire of *London* Esquire, was in *Michaelmas Tearm* last, Indicted in this Court *for several high Treasons committed by himself*, together with *Hugh Mac-Mahon* and divers *other Conspiratours* and false *Traytors* against our Lord the King within the Realm of *Ireland* in *partibus transmarinis*, on the 23 day of

The Case and Plea of the Lord Magwire.

of *October* 17 *Caroli*, Upon his Arraignment at this Bar, after *not guilty* pleaded, being demanded, *how he would be tryed?* he put in this *special Plea*, as to the particular manner of his Tryall only, under his Councels hand.

That by the Statute of *Mag. Charta*, it is enacted, *That no freeman ought to be imprisoned &c. Nor will we passe upon him, but by the lawful Judgement of his Peers, or by the Law of the Land.* That after this in a Parliament held at *Droghedah* in the Kingdome of *Ireland* in the 10th. year of King *Henry* 7th. it was enacted: *That all Statutes late made within the Realm of* England *concerning or belonging to the Common and Publique weal of the same, from thenceforth should be deemed good, and effectual in Law: and over that, be accepted, used and executed within the Land of* Ireland *in all points, at all times requisite, according to the tenor and affect of the same. And that by authority aforesaid they and every of them be authorized, approved, and confirmed in the said Land of* Ireland: That before the time of the supposed Treasons, *King Charles* by his Letters Patents under the great Seal of *Ireland*, bearing date the last day of *August*, *in the 4th. year of his Raign* at *Dublin* in *Ireland*, did create *Brian Magwire*, Father of the said *Connor Magwire*, Baron of *Iniskellin* in the County of *Farmanagh* in the said *Realm*; and granted *to him and the Heirs males of his body*, the *title, honor and dignity of the said Barony, and to have a place and voice among the Peers and Nobles of* Ireland *in the Parliaments of that Realm*; By virtue whereof the said *Brian* was seised in his demesn as of *Fee tayl* of the said *Barony*, and dyed seised thereof at *Dublin* 1 *Feb.* 12 *Caroli.* before the supposed Treasons: after whose death, the said *Barony* discended to him as Heir in tail: That by virtue of these Letters Patents, before the said supposed *Treasons committed*, he was one of the *Barons, Lords*, and *Peers of Parliament in the Realm of Ireland*; and at the *Parliament begun and held there* the 16th. *day of* March. 16 *Car. at Dublin*, and continued untill the 17th. of *August* then next following, and then adjourned till the 9th. *of November* next ensuing, and thence

thence proroged to the 24 *of February next following*, *and from thence continued* till the 24 *of June* 17 Car. *he was present as one of the Peers of the Realm of Ireland.* And further saith, that on the 23 *of October* 17 Car. he was taken and arrested by certain Persons to him unknown at *Dublin* in *Ireland*, and there committed to safe Custody for the *Treasons pretended to be committed* by him, till afterwards he was on *the* 12 *of June* 18 *Car.* by certain Persons to him unknown, brought in safe Custody, against his Will, to *Westminster within the Realm of England*, and then and there committed to the *Tower of London*, where he is yet detained. And therefore pr yeth, that he *may be tryed and judged by his Peers of the Realm of Ireland for the supposed Treasons in the Indictment.* To this plea of his, Mr. *Aske* the Kings Attorney in this Court hath *demurred in Law*, and the Prisoner hath joyned in *demurrer*: And whether *this Plea* of the Prisoner as *to his tryall by his Peers of the Realm of Ireland, be good in Law*? is the sole question to be now argued.

This Case is of very great concernment, and yet of greater expectation: It concerns the whole *Peerage of Ireland* in some respects, on the one hand; and on the other, the *Justice* both of the *King*, *Parliament* and *Kingdome* of *England*, in bringing a desperate *Rebell* and *Arch-Traytor* to *condigne punishment*, for the most horrid, bloody *Treason* against the *Kings Royal Crown* and *authority*, the Protestant *Religion*, and the whole *English Nation inhabiting Ireland* (devoted to destruction by this Traytor and his Confederates) that ever was plotted or executed under the Sun. The eyes of all our 3 *Kingdomes* highly concerned in and deeply suffering by this *Treason*) but more especially the eyes and hearts of our adjoyning vigilant *Parliament* (which hath specially recommended it to this Court and assigned my self among others, Counsel in this Case) are intentively fixed upon the final result and issue of it. I wish my vacancy to study and abilities to argue this *publique Cause*, had been such as might have satisfied expectation, and discharged

the truſt repoſed in me; but other *publique ſervices* having much interrupted me therein, I ſhall begin to argue it for the preſent with the beſt skill I may, and ſo leave it to thoſe learned Gentlemen of the Law (if there ſhall be need of any further Arguments) who are provided to argue after me, to ſupply what is defective in this my premiall Argument.

What not in queſtion.

All matters of fact and *form* ariſing in this *Plea*, have been already admitted true, and ſufficiently pleaded in Law by mutual conſent, and nothing but the meer matter in Law reſts now to be debated, which I conceive to be but one ſhort ſingle point.

For though the Priſoner pleads, *that there was a Parliament, of which he was a Peer and Member, continuing in Ireland by prorogation at the time of his apprehenſion and ſending over into England*; Yet this *Privilege of Parliament*, comes no wayes in queſtion as to the point of his triall, now only in iſſue (as hath been falſly ſuggeſted to the *Lords houſe* and intimated in an *Ordinance* of theirs ſince revoked,) but relates only to his firſt apprehenſion, which is not here in controverſie. Beſides, he pleads not, that *this Parliament is yet continuing and actually ſiting in Ireland, of which he ought to have* * *the privilege*; but that it was continued till the 24 of *June* 17 *Car.* which is 3 years ſince, and ſo intended to be long ſince ended. Nor pleads he, that he ought to be, or to have been tryed for this Treaſon in *the Parliament of Ireland*, nor that his *privilege of Parliament ought to extend to ſecure him from any apprehenſion or* Indictment *for high Treaſon*, (when the Treaſon is viſible and reall, as his is, and not imaginary only,) in which Caſe *of Treaſon no privilege of Parliament is to be admitted, as hath been reſolved* 8 *H.* 6. *rot. Parl. n.* 57. 31 *H.* 6. *rot. Parl. n.* 25, 26, 27. *Cooks* 4. *Inſtit. fo.* 25. So as the matter of his *privilege of Parliament*, is quite out of dores, and the ſole point in iſſue is but this.

* See 3 E. 4. c. 1. in Ireland.

The Queſtion

Whether *a Peer of Ireland committing high Treaſon in Ireland, for which he is there apprehended, and afterwards by order of Parliament here, brought thence into England againſt his*

his Will, may be endicted and tryed for that Treason in this Court of Kings Bench, by a Jury of Middlesex only; not by his Peers of Ireland; by virtue of the Statute of 35 Hen. 8. chap. 2.?

And under favour, I conceive in some clearness affirmatively, that *he may, and shall be tryed here by an Ordinary Jury of* Middlesex, *and outed of his Peerage, by virtue of this Act.*

The Question arising meerly upon the *Act* it self, which is very short, I shall first recite it, and then draw my Arguments, out of the very intention, words and bowells of it.

FOrasmuch as some doubts, and questions have been moved, that certain kinds of Treasons done, perpetrated or committed out of the Kings Majesties Realm of England and other his graces Dominions, cannot, ne may by the Common Laws of this Realm be enquired of, heard and determined within this his said Realm of England; for a plain remedy, order, and declaration therein to be had and made; Be it enacted by Authority of this present Parliament, that all manner of offences being already made or declared, or hereafter to be made or declared by any the Laws and Statutes of this Realm, to be Treasons, misprisions of Treasons, or concealments of Treasons, and done, perpetrated or committed by any person, or persons out of this Realm of England; shall be from henceforth, inquired of, heard and determined before the Kings Justices of his Bench, for Pleas to be holden before himself; by good and lawfull men of the same Shire where the said Bench shall sit and be kept: or else before such Commissioners, and in such Shire of the Realm, as shall be assigned by the Kings Majesties Commission, and by good and lawfull men of the same Shire, in such manner and form, to all intents and purposes, as if such Treasons, or Concealments of Treasons, had been done, The Act of 35 H. 8. c. 2.

perpetrated and committed within the same Shire where they shall be so inquired of, heard and determined as is aforesaid.

Provided alwayes, that if any the Peers of this Realm shall happen to be endicted of any such Treasons or other offences aforesaid, by authority of this Act, that then after such Indictment they shall have their Tryall by their Peers, in such like manner as hath been heretofore accustomed.

From this Act I shall deduce several Arguments and conclusions to prove, that the Prisoner at the Bar, though a *Peer of Ireland*, shall be tryed *by an ordinary Jury of Middlesex, here*, not by *his Peers in or of Ireland*, for the Treasons committed in *Ireland*, whereof he stands here indicted.

For my more methodical proceeding, I shall divide the single point in controversie into these 3 subordinate Questions.

1. *Whether this Statute extends to Treasons committed in* Ireland, *by Irish Commoners?*

2ly. *Whether it reacheth to Treasons in* Ireland *perpetrated by Irish Peers, as well as by Irish Commons?*

3ly. *Admit it extends to Irish Peers as well as Commoners, whether it doth not then inevitably out them of their Tryalls by Irish Peers, and Subject both of them alike to a Tryal at this Bar, by a* Middlesex *Jury?*

Question 1. For the first, *Whether this Act extends to Treasons committed in Ireland by Irish-Commoners?* There is but little doubt of it. For first, it is as clear as the Sun at Noonday, that this Act extends to *all Treasons done or perpetracted in* Ireland *by* Irish-*Commoners*; for the main scope and intent of this Law being, *to make all manner of offences then made or declared, or hereafter to be made or declared to be Treasons, misprisions of Treasons, or concealments of Treasons, by any Laws or Statutes of this Realm, done perpetracted or committed by any person or persons out of* England, *inquirable or tryable within this Realm, without*

any

any ſcruple or difficulty, either in this Court, or before ſuch Commiſſioners in ſuch Shire of this Realm, as the King by his Commiſſion ſhall aſsign (the very ſum and ſubſtance of this Act, as the expreſs letter thereof reſolves,) the Realm of *Ireland*, being out of *this Realm of* England, and no part thereof, and Treaſons therein committed by Commoners, being *Treaſons done and perpetrated out of this Realm of* England; (as is clear by 20 *H.* 6. f. 8. a. b. 19 *H.* 6. 53. b. 32 *H.* 6. 25. b. 2 *R.* 3. f. 12. 1 *H.* 7. f. 3. Plowden, 368. b. Dyer, f. 360. b. Cook 7. Report. f. 22, 23. Calvins caſe, 1 *H.* 5. c. 8. 4 *H.* 5. c. 8. 4 *H.* 5. c. 6, Cooks 3 inſtit. p. 11. 18.) Theſe treaſons muſt certainly and moſt neceſſarily be both within the intent and words of this Law; and ſo conſequently tryable in this Court by an ordinary Jury of *Middleſex*, without any ſcruple or difficulty. The rather becauſe *Ireland*, though out of this Realm of *England*, is yet part of the *Kings dominions*, and a ſubordinate Kingdom, united and annexed to the Crown of *England*, governed by the Laws of *England*, and bound by Acts *of Parliament* made in *England* in many Caſes, as is reſolved and undeniably evidenced by *Pat.* 6. *Iohan. m.* 6. *n.* 17. *Rot. Pat.* 8 *Johan. m.* 1. *Clauſ.* 12. *H.* 3. *m.* 8. *Pat.* 30 *H.* 3. *m.* 3. 14 *H.* 3. The Statute of *Ireland. Pat.* 5 *E.* 3. *pars* 1. *m.* 25. 11 *E.* 3. *c.* 2, 3, 4, 5. 27 *E.* 3. *c.* 3, 18. 13 *E.* 1. *Stat. de Mercat.* 1 *H.* 5. *c.* 8. 4 *H.* 5. *c.* 6. 1 *H.* 6. *c.* 3. 3 *H.* 7. *c.* 8. 1 *H.* 8. *c.* 5. 132 *H.* 8. *c.* 4. 35 *H.* 8. *c.* 2. 32 *H.* 6. *Statutes of Ireland, c.* 1. 8 *E.* 4. *in Ireland, c.* 1. 10 *H.* 7. *in Ireland, c.* 4, 5. 22. 7 *H.* 8. *in Ireland, c.* 1. 28 *H.* 8. *in Ireland, c.* 2, 3, 5, 6, 7, 8, 13, 15. 18, 19. 33 *H.* 8. *in Ireland, c.* 1. 1 *H.* 7. *f.* 3. *Kelway, f.* 202. *b. Cooks* 7 *Rep. of* 22, 23. *Calvins caſe.* 1 *Inſtit. f.* 141. *b.* 4 *Inſtit. f.* 349, 350, &c. 3 *Inſtit. p.* 18, Mr. *Saint Johns Argument at Law at Straffords attainder, p.* 53. to 64. And therefore Treaſons there committed are more apt and proper to be tryed here within the letter and intention of this Law, then *Treaſons* done in *France*, *Spain*, or any parts elſe out of the Kings dominions, where our Laws and Acts of Parliament are not *obligatory*.

2. This

2. This Statute (as I conceive) was principally made to puniſh Treaſons, miſpriſions of Treaſons, and concealments of Treaſons in *Ireland*, where they were more frequently done and perpetrated, than in any or all parts of the world out of this Realm of *England*, as our Hiſtories and the * *Iriſh Statutes* record: And the horid general Treaſon, Inſurrection and Rebellion in *Ireland* (much like this for which the Priſonner is indicted) mentioned in the Statute of *Ireland*, 28 *H.*8. *c.* 1. but 7 years before this Act, with other frequent *Treaſons* and *Rebellions* there, were no doubt the chiefeſt ground of making this new Law. And that which puts it out of all diſpute is the Statute of 28 *H.*8. made in the Parliament at *Dublin* in *Ireland*, c. 7. which reciting the Statute of 26 *H.*8. *c.* 13. made in *England* concerning *Treaſons*, and enacting, (as this of 35 *H.*8.) "That if any of the Kings Subjects, Denizens, "or others do commit or practiſe **out of the limits of this "Realm** (of *England*) in any outward parts, any ſuch "offences which by this Act are made, or heretofore "have been made *Treaſon*, that then ſuch *Treaſon*, what"ſoever it be, that ſhall ſo happen to be done or commit"ſhall be inquired and preſented by the oaths of 12 "good & lawfull men, upon good and probable evidence "and witneſs, in ſuch Shire and County of this Realm, "before ſuch perſons as it ſhall pleaſe the Kings Highneſs "to appoint by commiſſion under his great Seal, in like "manner and form as *Treaſons* committed within this "Realm have been uſed to be inquired of and preſented, & "that then upon every indictment and preſentment foun"den and made of any ſuch Treaſons, and certified into "the KINGS BENCH, like proceſs and other circum"ſtance ſhall be there had and ſued againſt ſuch offen"dors, as if the ſame Treaſons ſo preſented had been law"fully found to be done and committed within the li"mits of this Realm, &c." Addes this memorable clauſe thereto, *Conſidering then this Statute made in the Realm of* England, *is moſt beneficial and expedient to have due execution* **within the Kings Land and Dominion of**

* See the ſtatutes of Ireland, 3 E. 2. c. 4. 18 H. 6. c. 2, 3. 25 H. 6. c. 4, 5. 28 H. 6. c. 1. 1 E. 4. c. 2. 5 E. 4. c. 6. 18 E. 4. c. 2. 10 H. 7. c. 6, 8, 9, 10, 13, 17, 19. 28 H. 8. c. 1, 3, 9, 11. 3 Phil. & Mar. c. 11. 1 Eliz. c. 6, 17. 27 Eliz. c. 1. 28 Eliz. c. 8, 9. 11 Jac. c. 4. and the Annals of Ireland.

of *IRELAND*, especially in respect of the high rebellion here lately committed, *that the odible infamy against the King and Queen in the same Act expressed, and other offences, abuses, and abominations there mentioned,* **principally have been promulged, pronounced, done and attempted within this said Land,** *Be it therefore established, ordained and enacted by authority of this present Parliament, that the aforesaid Statute and Ordinance, and every thing and things therein contained, be established, confirmed, accepted, deemed, judged and taken for* **a good and right Law within the Kings Land and Dominion of *IRELAND*, and to be as good, effectual, and of the same strength and quality, effect, force and vertue to all intents and purposes within the said Land, as the same is or ought to be in the Realm of *ENGLAND*;** *and that the said Statute and Act made in* ENGLAND, *and every thing therein contained,* **shall have relation, and take effect within this Land of *IRELAND* against all offendors contrary to the form thereof, &c.** Now that Act of 26 *H.* 8. c. 13. with this of 35 *H.* 8. c. 2. being principally made and intended for the Treasons done and committed in *Ireland*, as this *Irish*-Parliament resolves *in terminis*, and *being most beneficial and expedient for that Realm*; it wou'd be very illegal, yea irrational, absurd, impolitick, and improvident to exclude *Ireland* out of this Law, where *Treasons were most frequent, most dangerous to* out Kings and Realm, and to extend it only to other places out of the Realm, where Treasons were seldome done or perpetrated, and nothing so perilous to the King and Realm of *England*, as Treasons, Rebellions in *Ireland* have usually been in former and later ages.

3ly. It hath been adjudged by all *the Judges of England* both in **Orourks* case, 33 *Eliz.* and in Sir *John Parrets* case 24 *El.* cited in *Calvins* case, Cooks 7 Report. f. 23 a. *in his* 1 *Institutes on Littleton*, *f.* 26. *b.* 3 *Institut. p.* 11, 24. and so was it agreed without any argument in *Hugh Mac-Mahones* case this last *Michaelmas* Term

* See Mr. St. Johns argument against Strafford, p. 52, 53.

(the Prisoners Confederate in this horrid Treason) that Treason committed in *Ireland* it self by an *Irish* Commoner, is tryable in this Court by this very Statute, contrary to the subitane extrajudicial opinion of *Dyer*, *M.* 19, & 20 *Eliz. fol.* 360.) resolved since to be no Law; Seing then it hath been thus frequently resolved heretofore, and in case of the Treasons now in question this very last Term without any scruple; *That an* Irish-*Commoner committing Treason in* Ireland, *and brought over from thence hither against his will, is tryable in this Court by a Middlesex Jury*; there is no doubt at all of the first question, but that this Statute extends to Treasons committed in *Ireland* by *Irish* Commoners, and the doubt (if there be any) will rest meerly in the second point, which I am already arrived at. Namely,

Quest. 2d. *Whether this Act extends to Treasons perpetrated in* Ireland *by* Irish-*Peers, as well as by* Irish *Commoners?* And under correction, I conceive with much clearness that it doth, for the seensuing reasons.

1. From the generallity and universality of the Act it self, wherein I shall observe a four-fold universality, which supplies me with four undenyable arguments, to prove *Irish Peers*, within this Law, as well as *Irish Commoners*.

The first, is a *universality* of *the Kinds of offences* specified in the Act, in these general Terms; **All manner of offences** *being already made or declared, or hereafter to be made or declared by any the Laws or Statutes of this Realm, to be Treasons, misprision of Treasons, or concealment of Treasons, done or perpetrated out of this Realm of* England, *shall be enquired of by the Kings Justices of his Bench &c.* Now these general words **All manner of offences, &c.** must necessarily extend to all manner of *Treasons* perpetrated or committed out of this Realm by *Peers* as well as Commoners; To the Treasons of the Lord *Magwire*, as well as to the Treasons of *Mac-Mahone* Esq;, they being the selfsame Treasons in substance, and a manner of *Treasons specially made and declared by the Laws of this Realm*,

Realm, since there are no restrictive words to confine these general clauses of Treasons only to Commoners, and no expresse exception for the offences or Treasons of Irish Peers to be found within the Statute; else there would be a repugnance and contradiction between the text and the Glosse, and this general should be turned into a specifical in respect of the Traitors offending. Therefore this general clause extending to all Treasons whatsoever done or perpetrated out of the Realm, must necessarily extend to the Treasons of all Irish Peers as well as Commons, and so both of them by the words and intention of this Law shall be triable in this Court.

The second is, *a universality of time. All manner of offences already made or declared, or hereafter to be made or declared Treason &c. done perpetrated or committed, or* **hereafter to be done, perpetrated or committed,** *shall be enquired of by the Kings Justices of the Bench, &c.* which extends to all former Treasons done out of the Realm at any time before the making, and to all future Treasons since the passing of this Act: Now this universality of time extends as well to the Treasons of Irish Peers as Commoners, to the Treasons of Baron *Magwire* as well as of Mr. *Mac-Mahone*, both being alike Treasons committed after this Act.

The 3d. is. a * *universality of place. All manner of Treasons done, perpetrated or committed* **out of this Realm of England**: that is, *in any place whatsoever out of the Realm of* England, be it in *Ireland, Scotland, France, Spain, Germane, Italie, Barbary, Turkie*, the *East* or *West Indies*, as was resolved in *Dr. Stories case*, Hil. 13 Eliz. Dier 298 b. 2 & 3. Phil. & Mar. Dier 131, 132. Now this extends generally to all forein Treasons committed by *Peers* as well as Commons, and so to the *Treason* of the Prisoner at the Bar, it being done in *Ireland*, out of *this Realm of England*, and so fully within the Act. See Cooks 3 Instit. P. 34.

The 4th. (which is fatal and unanswerable) is *a universality of Persons*, coupled together with all the 3 former generalities in these expresse words. *All manner of of-*

fences made: Treason &c. done, perpetrated or committed **By any Person or Persons** *out of this Realm of* England; *shall be from henceforth inquired of, heard and determined before the Kings Justices of his Bench, &c.* Now **any Person or Persons**, being a universal expression, equivalent *to all manner of Persons whatsoever, Collectively:* or, *to all and every Person whatsoever, distributively*, extends to Irish *Peers* as well as *Commoners*, yea to all Subjects of all Ranks whatsoever, within the compasse of this Law in regard of the manner of Tryal, but such only who are excepted out of it by *special Proviso*. Now Irish Peers are none of those Persons excepted, as I shall prove anon.

That these words *any person or persons*, extend to Peers as well as Commoners, where there is no exception of Peers, is undeniable.

First because a Peer is a *Person*, though of a higher rank or degree than an ordinary Commoner or Freeman; and one kind of *person* in Law; therefore within these words *any person or persons*.

2ly. Because general Laws made for the common good safety of the Realm, and punishment of the grand crime of High *Treason*, are like to Go himself, * *No respecters of persons*, but bind and punish all alike. Therefore *any person or persons* in such a publick Law as this, made for the common good, safety, and punishment of the greatest Treasons, Evils, must necessarily include all persons, subjects whatsoever, and except none, especially the greatest, whose examples and offences are commonly most dangerous and pernicious.

* Acts 10. 3, 4. Rom. 2. 11. Eph. 6.9. Col. 3.25. 1 Pet. 1. 17.

Thirdly in all publick Acts whatsoever; These words *any person or persons*, extend to Peers as well as Commoners, and I know no one President to the contrary. To instance in some few Acts instead of many; In the Statutes of 26 H. 8. c. 13. & 5, & 6 E. 6. c. 11. concerning Treasons, *any person or persons*; or any of the *Kings Subjects, Denizen, or others, that shall commit or practise* Treason *out of the limits of this Realm, in any outward parts; extend to Peers as well as Commons*. Therefore in this Act of the

the ſame nature. So in the Statutes of 1 Ed. 6. c. 1. 2 & 3 E. 6. c. 1. 5 & 6 E. 6. c. 1. & 1 Eliz. c. 2. If *any perſon or perſons ſhall deprave or revile the moſt bleſſed Sacraments, or the book of the Common prayer, &c.* In the Statute of 1 Eliz. cap. 1. and alſo of 5 Eliz. cap. 1. *If any perſon or perſons*, &c. *ſhall extoll*, &c. *the power of the Biſhop of* Rome, *or of his See*, 13 Eliz. c. 1. *If any perſon or perſons ſhall bring in, or put in ure any Bull from the Biſhop of* Rome, Agnus Dei, *Pictures, Croſſes*, &c. In the Statute of 23 *Eliz. c.* 2. *If any perſon or perſons ſhall with a malicious intent ſpeak any falſe or ſeditious news of the Queen*, &c. In 27 *Eliz.* c. 2. *If any perſon or perſons ſhall harbour or contribute any mony to the maintenance of any Jeſuites, Prieſts, &c.* In all theſe Acts (to pretermit * *many others*) the words *any perſon or perſons*, extend to *Peers* as well as Commons, as is reſolved in the bodies and Proviſoes of all theſe Acts: Yea, in the Statute of 25 *E.* 3. *c.* 2. of *Treaſons* (though a moſt penal Law) the words are only; If *a man do compaſs or imagine the death of the King*; *If a man do levy war againſt the King in his* Realm, &c. *If a man counterfeit the Kings Broad or Privy-ſeal, or his mony*, &c. Yet it hath been reſolved without diſpute in all times, and ſo agreed by Sir *Edward Cook*, *Inſtitutes* 3. p. 4, 5. That this word *a man*, extends to *both ſexes alike, including women as well as men, Peers as well as Commoners, Lords, as well as* Peſants. yea all ranks, callings, conditions of men who are Subjects: and that this word *man* in the ſingular number only, extends to *many men* to any number of men committing any of theſe Treaſons joyntly, as well as to a ſingle man or Traytor, becauſe it is a general Law, made for the ſafety of the Kings perſon, and the Realm. Much more then muſt any perſon or perſons, in this Statute, being both in the ſingular and plural number, and in common acceptation a far more univerſal, general, and comprehenſive expreſsion than this of *a man*, in 25 E. 3. c. 2. extend equally to all ſorts, ſects, and degrees of men, as well as it, and ſo to Peers as much as

* See 25 H. 8. c. 3, 10, 13, 26 H. 8. c. 2. 32 H. 8. c. 4, 7, 9. 13. 5 Eliz. cap. 9. 14, 15, 21, 22, 23. 8 Eliz. c. 2, 3, 4. 13 Eliz. c. 8. 13, 14 Eliz. c. 3. 1, & 2 Phil. & Mar. c. 3. 1 Eliz. c. 6.

it, and to Peers as well as to Commons, as it doth in the Statutes of 25 H. 8. c. 22. 26 H. 8. c. 13. 27 H. 8. c. 2. 33 H. 8. c. 12. & 20. 5 E. 6. c. 11. 1 Mar. c. 6. 1. & 2 Phil. & Mar. c. 9, 10, 11. 5 Eliz. c. 1. 13 Eliz. c. 2. 18 Eliz. c. 1. 23 Eliz. c. 1. 27 Eliz. c. 2. 3 Jac. c. 4, concerning Treasons.

2ly. My second Argument to prove *Irish* Peers within this Statute, is, because *Irish Commons* are within its Verge even for Treasons committed in *Ireland*, as hath been adjudged in the forecited cases of *Orourk*, *Sir John Parrot*, *and Mac-Mahone*: For Laws and Law-givers *being no respectors of persons*, where the offences be the same, and there being no one clause, word, or syllable in this Statute extending to *Irish* Commoners Treasons, but which doth, may and ought by the self same Justice, reason, equity to extend to the Treasons of *Irish* Peers, (this Statute making no distinction between the one and other, and the Commons of *Ireland* having as absolute a right and Inheritance in their native Privilege of being tryed by their Peers in *Ireland*, (which yet is taken away by this Act in case of Treason) as the Peers in *Ireland* have in their Peerage to be tryed there by their *Irish* Peers:) We must not, yea we cannot in point of Justice distinguish between the one and other, where the Law it self makes no distinction: Therefore since the *Irish* Commoner is undoubtedly within the words and scope of this Act to be tryed at this Bar by a *Middlesex* Jury, the *Irish* Peer (unless we will judge with respect of persons, and coyn a distinction not warranted by this Act) must be also tryed in the self-same manner. The Law is the same, the crime is the same, both in *Magwires* and in *Mac-Mahones* cases, therefore the Tryal and Judgement too must in law, reason be the same in both.

3ly. It will be granted me without dispute, That if an *Irish Peer* commit Treason in any forein parts out of *England* and *Ireland*, as in *Spain*, *France*, *Flanders*, *Italy*, or *Germany*, he shall be tryed in this Court by an ordinary

ordinary Jury if Free-holders, and not by his Peers in *Ireland*, by vertue of this Act. Nay, if he commit Treason in *Ireland*, and flye into *England*; he may and shall be tryed for that very Treason by an ordinary Jury at this Bar, * because by flying his Country, and a legal tryal there, he hath outed himself of the benefit of his Peers. Therefore it extends to *Irish-Peers*, even for Treasons done in *Ireland*, else they could not be tryable here in any of these Cases, which are granted on all hands to be Law.

* See Cooks 3 Instit. p. 31.

4ly. It is evident by the *Proviso* in this Act, that *English Peers* committing any manner of *Treasons out of this Realm, are tryable for it in England* by vertue of this Law, as well as *English Commons*, though they were not so by the Common law. Therefore *Irish Peers* committing Treason, shall be within it likewise, & so tryable here as well as *Irish* Commons, else they should be in far better condition than *English* or *Scotish Peers*, and quite exempted out of this Act. Now the same words that bring *English-Peers* within this Law, must of necessity hook in *Irish-Peers* too, there being no clause which exempts or includes the one more than the other.

5ly. The very letter, intent, and scope of this Act (as appears by the body of it, and likewise by the Statutes of 26 H. 8. c. 13. & 5. & 6 E. 6. c. 11. to the same effect) was, *to make all Treasons done or committed out of* England *by any person or persons whatsoever, tryable in* England, *either before the Justices in this Court, or* * *before special Commissioners in some other Counties*; but to be still tryable *within this Realm*, as the words (*All manner of Treasons hereafter to be done, perpetrated, or committed by any person or persons out of the Realm of* England, shall be **from henceforth** *enquired of, heard, and determined before the Kings Justices of his Bench &c.*) clearly resolve in direct terms: Therefore to make the Treasons of *Irish-Peers* committed in *Ireland* or elsewhere tryable here in *England*, as well as the Treasons of *English-Peers*, or *Irish-Commoners*. And to send them back into *Ireland* to be there

* See 26 H 8. c. 13. 1 E. 6. c. 11.

there tryed by their Peers, when once they are here in Prison, and indicted in this Court, by exempting them out of this Act, contrary to the very letter and intent of the Law, is to run point-blank against the very words and meaning of this Law and the Law-makers: Therefore he must by this Act be tryed at this Bar, and that by an ordinary Jury only, as I shall prove anon.

6ly. The very scope and sole purport of this Act is not to make new Treasons or Traytors, which were none before, but to bring real Traytors only for Treasons formerly made, or hereafter to be made and declared Treasons by the Laws and Statutes of this Realm, to exemplary punishment in this Kingdome, for the peace and preservation of the King, Realm, and the better execution of Justice (the very life of Laws) upon Delinquents only of the highest rank, for the most transcendent crimes of High *Treasons*, or misprision, or concealments of Treasons, not for Felonies, or petit Treasons: Which consideration must necessarily induce us, for the common good, to give it the largest, fullest, and most equitable construction that may be. Thus the Judges in former times have always interpreted it, as appears by *Dyer*, *f.* 132, 298. *Cookes* 7. *Rep.* Calvins *Case*, *f.* 23. *a.* his first Institut. on *Littleton*, *f.* 26. *his* 3 Institut. *p.* 24. and in *Orourkes* case; wherein the Judges resolved. 1. That the Statute of 1 *Mar.* Sess. 1. repealing all former Treasons, but those within 25 E. 3. and of 1 & 2 Phil. and Mar. c. 10. enacting, *That all Tryals hereafter to be had for any Treason, shall be had and used only according to the due course of the Common-law of this Realm, and not otherwise: exend not to the taking away of forein Treasons or their tryals by this Law*; And in *Orourks* case, they extended it by equity, beyond, and in some sort against the letter of the Law it self; *for he standing mute, and refusing his Tryal, was thereupon condemned and executed for a Treason committed by him in* Ireland, though the words of the Statute are, *The Treason shall be enquired of, heard and determined before the Justices of the Kings*

Kings Bench by good and lawfull men of the ſame Shire, where the ſaid Bench ſhall ſit; and the Act ſpeaks nothing at all of ſtanding mute. But this being a publique Law for the Common good, to bring Traytors only to their Tryal and juſt puniſhment, his refuſal to put himſelf upon his Tryal, was adjudged to be a determination and conviction of his Treaſons within the Act, elſe any Traytor by ſtanding mute might evade and fruſtrate this good Law. If then this Statute may thus be conſtrued by equity and dilated beyond the words to one who ſtands mute, for a Treaſon done in *Ireland*: much more may it be extended to a treaſon by an *Iriſh*-Peer, who is fully within the words and intent of it, as I have already manifeſted: And it would be a moſt pernicious gloſs which ſhould either elude or nullifie this beneficial publique Law.

7ly. It is clearly reſolved in and by our Parliaments, 13 E. 1. Proem. 13 E. 1. of Statute Merchants, 21 E. 3. rot. parl. n. 67. in the Statute of 5 H. 5. ch. 6. & in divers of our * Law-books, *That Acts of Parliaments made in* England, *wherein* Ireland *is either ſpecially named or generally and neceſſarily included, do bind thoſe in* Ireland *both Commoners or Peers alike.* This therefore being ſuch a Law, extending and binding thoſe in *Ireland* as hath been reſolved in the for-cited Caſes, it muſt certainly bind both the Peers and Commons of *Ireland* to a Tryal at this Bar for Treaſons done in *Ireland*, when the King and Kingdom deem it neceſſary or expedient to try them here in *England*.

1 H. 7. 3. Co. 7. Rep. Calvins caſe, f. 16, 17, 23. Cooks Inſtit. 1. p. 35 Mr. St. Johns Argument at Law at Straffords Attainder, p. 61, 62.

8ly. The Proviſo in this Act for tryal of Treaſons done out of this Realm, by *Peers* within the ſame, extends only in poſitive terms to *Peers of this Realm of* England, becauſe they only are Peers within *England*, and ſo only tryable by their Peers, for forein Treaſons within the ſame, not to Peers of *Ireland* who are no Peers at all, nor tryable by their Peers within this Realm of *England*. Therefore this Proviſo extending only to Peers of this Realm, excludes all other forein Peers whether *Iriſh* or *Scots*, from any tryal by their Peers

in *England* for Treasons acted out of it.

9ly. There is very great reason why Natural *Irish* Peers and Barons should be within the compass of this Law as well as Commoners, and *rather they than any other forein* Peers, because as our* Historians, the *Irish Annals*, Statutes and our Records do testifie, ever since their conquest by K. *Henry* the 2d. and submission to the Kings of *England*, they have *frequently* (*almost every year*) *in most Kings Reigns broken footh into private, petit, or general Rebellions and Insurrections against the* English (as I could instance in sundry particulars) in which Rebellions I commonly find a *Magwire*, a *Mac-Mahon*, and *Oneal*, in the *van*, as *Ring-leaders of all the rest*, as they were in this last Rebellion, wherein most of the native *Irish* Peers and greatest *septs* have been deeply engaged as principal Conspiratours. Among other Rebellions I find in Story, and (which is more authentick) in the expres Statute made in the Parliament at *Dublin* in *Ireland*, *anno* 28 *H.* 8. *c.* 1. (but 7 years before this Law;) That *Gerald Fitz Gerald Earl of* Kyldare, *the Earl of* Desmond, with divers other of *the Irish Peers and Gentry conspiring together, to extirpate the* English, *and deprive the King of his Soveraignty in* Ireland, *did send to the* French King, the Emperour and Bishop of Rome, *for ayd and assistance for taking the same Land out of the Kings and* English *possessions*; *and thereupon with Banners displayed and great forces traytorously invaded the Kings dominions there, besieged the City and Castle of* Dublin, *murdered the Kings good Subjects, who withstood them, and resisted the Kings forces sent from hence, &c. for which they were all by this Act* attainted of High Treason. The like general Rebellions have there broke forth sundry times both before and since that Act; but none so generally, dangerously, bloodily, as this for which the Prisoner at the Bar stands endicted. The Treasons therefore in *Ireland* being commonly so frequent, so general, (wherein most of the native *Irish*-Peers, and some of the *English* extraction too) were usually chief Actors; there was very great reason,

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* Mat. Paris An. 1230. Mr. Cambdens Ireland p. 114. to 140. The Annals of Ireland in Mr. Camb. Britan. p. 154, 156, 157, 158, 159, 160, 162, 163, 164, 165, 166, 167, 168, 869, 170 to 201.

* See 1 E. 3. rot. parl. n. 4, 5, 6. 6 E. 3. n. 11. 6 E. 3. Parl. 2. n. 3. 7 R. 2. n. 4. 13 R. 2. n. 2.

See p. &c.

policie and juſtice too, why ſuch a Law as this ſhould be made, to reach to *Ireland*, and why in ſuch caſes as theſe, (Rebellions there being ſo univerſal, and moſt of the *Iriſh* Nobility, Conſpiratours, and parties in them) that theſe Peers and the chiefeſt Conſpiratours when ſurprized, ſhould be preſently ſent over from thence into *England* and tryed there for their *Treaſons*.

1. To ſecure their perſons from eſcapes and reſcues, which might be there more eaſily procured, eſpecialſy when and where the *Iriſh* Rebells are Maſters of the Field, as the Statute of 17 H. 7. in *Ireland*. c. 14. reſolves.

2ly. To avoid a * fayler of Juſtice there, when by reaſon of the many *Iriſh* Peers there out in actual Rebellion, or by means of alliance of moſt other Peers to them, or of the flight of other thence, or the employment of them in ſervice, or places of truſt, or by reaſon of the interpoſition of the Rebels forces between them and the place of their Tryal there, a competent number of indifferent *Iriſh* Peers for a ſpeedy Tryal cannot be aſſembled with ſafety or conveniency in *Ireland* to try a Rebellious Traytor by his Peers there; which obvious defects are all ſupplyed by this Act.

* Upon which ground writs of Error lie in the Kings Bench in England, to reverſe erroneous judgments in the Courts and Parliaments of Ireland, Cooks 4 Inſt. p. 352. Mr. St. Johns Argument at Law againſt Straford, p. 58, 61.

3ly. To prevent all partiality and injuſtice in ſuch Caſes, which might happen in Tryals by Peers in *Ireland* either by conſanguinity or alliance of the Peer to be tryed, to the *Irish* Peers who are to try him, or by confederacy of the Tryers in the ſame Treaſon with the party tryed; or through fear of miſchief or revenge upon the Tryers, Jury, Witneſſes, Judges, by the tryed Rebels Friends, Kindred and Confederates, in caſe he ſhould be condemned by them and executed (none being ſo vindictive and bloody in this kind as the *Iriſh*) Upon all which weighty reaſons, there was ſpecial cauſe, why both in juſtice, policy, and prudence, all *Irish* Peers, who by publick Rebellion commit High Treaſon in *Ireland*, ſhould be ſent over and tryed here by ordinarie Juries, to prevent the forenamed miſchiefs and fayler of Juſtice, and bring them to condign puniſhment. Now

in this case here in judgement at the Bar, all these recited reasons hold. For first, most of the *Irish* Peers were in actual Rebellion when the Prisoner was sent over: most of the *English* and Protestant *Irish* Peers there, eimurthered or forced to flye thence, or so dispersed and imployed, that they could not assemble a competent number of indifferent Peers to any place with conveniency to try him in *Ireland*. 2ly. The enemies and *Irish* Rebels were then Masters of the field in most places, the Prisoner in danger to be rescued by force from them, or by treachery likely for to escape out of their hands; and the times so troublesome, as would admit no leasure for such a Tryal. 3ly. Most of the *Irish* were allyed to *Magwire*, or ingaged with him in the self-same Treason and Rebellion; and so neither in Law, Justice, or Prudence fit or indifferent persons to pass upon his Tryal in this Case of most publick concernment. 4ly. The Judges, Witnesses and Peers that should try him there, would have been in extreme perill of their lives, and of exemplary publick revenges from their Confederate-Rebels, who threatned revenge, as appears by *Mac-Mahons* Speech (*Magwires* Confederate) to the Justices upon his first examination: *I am now* (said he) *in your hands, and you may do with me what you please*: **But I am sure within few dates I shall be revenged**: and by like words of revenge used by *Owen Oneile* in *Flanders* so soon as he heard *Magwire* was apprehended. 5ly. If he should now be sent back from hence into *Ireland* to be tryed, the Rebels and his party are there so predominant, that scarce any Witnesses, nor Peers, nor Judges either would or durst there to appear openlie against him; or else such means would be made to delay or delude his Tryal and Execution, that by some device or other, there would questionless be a fayler of Justice against him. Therefore for all these weighty reasons, he may and ought by all rules of Policy, Equity, and Justice to be arraigned and tryed only at this Bar by vertue of this Act, which so clearly extends unto him; *That so the blood*

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of * *above one hundred and fifty thousand innocent Protestants shed in* Ireland *in less than four months space* by means of *this Rebellion*, which cryes loud to Heaven and Earth for revenge against this great Contriver and Arch-promo of it, may not go un-revenged in a way of publick Justice to our eternal infamie. I have quite done with the second and main Question, and proved an *Irish* Peer to be within the Statute, as well as an *Irish* Commoner.

* Dr. Jones others printed Relations concerning the Irish Rebellion.

I shall now proceed to the last point, arising from the manner of this Plea, that he may be tryed by his Peers, not expressing where or how, and intimating that he would be so tryed here in *England*. It is briefly this. *Admitting an* Irish *Peer to be tryable in* England *for a Treason committed by him in* Ireland, *whether this doth not inevitably out him of his Tryal by* Irish *Peers, and subject him to a Tryal at this Bar by an ordinary Jury, as well as an* Irish *Commoner? And I conceive without any scruple, affirmatively; that it doth, for these undenyable Reasons.* *Quest.* 3*d.*

1. Because *Irish* Peers, are Peers only in *Ireland*, not in *England*, and cease to be such in judgement of Law so soon as ever they arrive in *England*, both personally in themselves and relatively to others, being here in judgement but mere *Esquires*, not *Lords*, and are to be sued as such, not as *Lords* or *Peers*, even as Peers of *Scotland*, *France*, or *Spain* are, as is resolved and adjudged 11 *E.* 3. *Fitzh. Brief* 473. 8 *R.* 2. *Process*, *Fitzh.* 224. 20 *E.* 4. 6. *Brook*, *Nosme de dignity*, 49 *M.* 19 *&* 20 *Eliz. Dyer* 360. *b. Cooks* 7 *Rep. f.* 15, 16. *Calvins case*, *Co.* 9 *Rep. f.* 117. the *Lord Sanchers Case* in point, and *Cooks* 3 *Instit. p.* 30. The Prisoner then being no Peer in *England*, it is impossible that he should be tryed in *England* by his Peers.

2ly. Because no such way of Tryal was ever yet heard of in any age, of any *Irish* or other forein Peer, tryed here in *England*, either by *English* Peers, or by his *Irish* or forein Peers; Therfore such a Trial shall not nor can be had or admitted now,

3ly. Because neither the Kings Bench, nor the Commissioners before whom the Statute limits these forein Treasons to be tryed, nor yet the High Steward of *England*, (if any such should be created) have any power or jurisdiction to summon a Jury of Peers out of *Ireland* to appear before them here in *England* upon such a Tryal as this; neither are the Peers of *Ireland* bound by any Law to appear or attend as Peers on any such service or tryal here, being Peers, & bound to service as Peers (which their Patents express) only in *Ireland*, and no Peers here. Therefore a Tryal by his *Irish* Peers here in *England* is an impossibility, as well as illegality.

4ly. Admit a Jury of Peers might be summoned and sent from thence, yet it would be a great delay of Justice, it requiring a long time to procure a full appearance of Peers thence: yea, a betraying of *Ireland* to the Rebels at this instant, to send for so many Protestant indifferent Peers now from thence as might serve to try him here. Moreover, it would be an infinite expence, charge, trouble, besides the danger by Sea, to summon a Jury of Peers from thence; and if they failed to appear in *England* upon summons, as is probable they would, and lawfully might they being not bound to it by any Law and so no fine certain to be set upon them for not appearing, nor legal means of coercion to compell them to come over upon such a Tryal, there should be a fayler of Justice for want of such a Peerage; And therefore no such Tryal may or can be expected, which would delude and nul this Law.

5ly. This Statute directs the Tryal of forein Treasons in express terms, to *be before the Judges in the Kings Bench, or the Commissioners appointed by the King in any County of this Realm.* Now no Tryal by *English* or *Irish* Peers was ever heard of either in the *Kings Bench*, or before such *Commissioners*, But it alwaies hath been, and ought to be either in the house of *Peers in Parliament*; or *before the Lord High Steward of* England, as all former Presidents accord, *and* 15 *E.* 3. *c.* 2. 1 *H.* 4. 1. 10 *E.* 4. 6. b.

b. 13 *H.* 8. 12. *Brook Treason*, 29, 33. *Cooks* 3 *Institutes*, c. 1. & 2. *p.* 28, 29, 30. 4 *E.* 3. *rot. Parl. n.* 1. 50 *E.* 3. *rot. Parl. n.* 21 *to* 31. 34. 7 *R.* 2. *n.* 15. *to* 24. 10 *R.* 2. *n.* 6. *to* 18. 11, *n.* 2. *n.* 6, 7. 14 *R.* 2. *n.* 14. 21 *R.* 2. *n.* 12 *to* 17. *& Placita Coronæ coram dom. Rege in Parl. n.* 1. *to* 20. 1 *H.* 4. *Plac. Coronæ in Parl. n.* 1. *to* 11. *Walsingham Hist. Ang. p.* 402. 2 *H.* 4. *n.* 30. 31. 5 *H.* 4. *rot. Parl. n.* 12. resolve. Therefore no Tryal can be in this case by Peers either in this Court, or before Commissioners, by vertue of this Act or any other Law.

6ly. This Statute is introductive of a new way of trying *forein Treasons*, done out of this Realm by a Jury within *England*, which by the rules of the Common-law could neither inquire nor take notice of any Treasons or matters committed, perpetrated, or acted beyond the Seas, as is evident by the Prologue of this Act, the Statutes of 26 H. 8. c. 13. 5 E. 6. c. 11. M. 2 & 3 E. 1. Coram Rege Rot. 56. Hereford. M. 2 E. 2. Fitzh. Obligation 15. & Utlagary 18. Tr. 18 E. 2. Fitzh. Testament 6. 6 E. 3. f. 17, 18. 27 Ass. 43. 41 E. 3. 19. 48 E. 3. 2, 3. 20 H. 6. 28, 44. 15 E. 4. 14, 15. 20 E. 4. Perkins, sect. 121. 494. 737. Cook 4 Instit. c. 17. 1 Instit. f. 74. Stamford l. 2. c. 14. Cook 2 Rep. 49 *a.* Long & Pecocks case, 5 Rep. f. 107. *a.* 3 Instit. f. 48, 49. Whereupon it altering the Common law in this particular, it *outs all former doubts*, & most punctually prescribes all the particulars and appurtenances belonging to the Tryal of them, from which there neither may nor can be any variation by Law.

First, it appoints the place where they shall be tryed.

1. *In general, within this Realm of England.*

2ly. *In particular, either in the Kings Bench wherever it sits, or in such County as the King by his Commissions shall assign.* 2ly. The Judges before whom the Tryal shall be are thus particularly described, *The Justices of the Kings Bench, or such Commissioners as the King shall appoint under the great Seal.*

3ly. The Jury-men by whom they shall be tryed are thus defined in *Terminis* in the Act, *By good and lawfull men* (nor Peers or Commons of Ireland) of the same Shire,

Shire *where the said Bench of the King shall sit, if the Tryal shall be in the Kings Bench*; And *if before Commissioners assigned by the King in any shire of the Realm, then by the good and lawfull men of the* **same shire** *where the Commissioners sit, which is doubled* (like *Pharohs* dreams) to make it more certain: and likewise precisely enacted by the Statutes of 26 *H.* 8. *c.* 13. & 5, & 6 E. 6. c. 11. in pursuance of this Act.

4ly. The manner how the Tryal shall be is thus punctually specified. **In such manner and form to all intents and purposes** *as if such Treasons, &c. had been done, perpetrated and committed within the same* * *shire where they shall be so inquired, heard and determined, as is aforesaid*; which last words (with the very like in the Statutes of 26 *H.* 8. c. 13. & 5 *E.* 6. *c.* 11. extending to our case) put an end to the point in Question; For if the Lord *Magwire* now at the Bar had committed the Treasons for which he is now endicted in *Westminster*, there is no doubt nor scruple of it, but he should have been tryed by a Jury of *Middlesex* notwithstanding his Peerage in *Ireland*; and he could neither have pleaded nor demanded his Peerage, as is resolved expreslie in *Calvins* case, *C.* 7 Rep. *f.* 15, 16. and in the Lord *Sanchiars* Case. *Cooks* 9 Rep. *f.* 117. who was tryed condemned by an ordinary Jury, for suborning *Carliel to murther Turner with a pistoll in* England, though a Peer of *Scotland*, because he was here no Peer; *and the forecited Books are expres, that the same Law holds in case of a Peer of* Ireland. Since then this Law expreslie enacts, *That the Tryal of all forein Treasons shall be by good and lawfull men of the same Shire where the Kings Bench shall sit in such manner and form,* **To all intents and purposes, as if the same Treasons** *had been committed here in* Middlesex *where the Kings Bench sits.* There neither may nor can be any other form of tryal for the Prisoner, nor in any other place, nor before any other Judges, nor by any other Jury, but such as this Statute hath punctuallie defined; and that is by a Jurie of *Middlesex*, **To all intents and purposes as if the Treasons**

* See Dyer f. 31. 232, 298, 360. Cooks 7 Rep. f. 23. 11 Rep. f. 65.

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for which the Prisoner stands indicted had been plotted and executed in *Middlesex*. Therefore to admit him to a Tryal by *Irish Peers*, and not by good and lawfull men of *Middlesex*; or to send the Prisoner back to *Ireland* there to be tryed by his Peers, is to run quite counter and pointblanck against this unanswerable clause of the Statute, *That he shall be tryed by good and lawfull men of the same Shire where the Kings Bench sits, to all intents and purposes as if the Treasons had been there committed.* And had they been there committed actuallie, as they are legallie by the expres purview of this Law, it could never so much as be scrupled and made a *quere*; whether he should be tryed by his *Irish* Peers here? or sent over to be tryed in *Ireland* for Treasons acted there, after an Endictment for them here found against him? In one word, Statutes which prescribe new forms of Trial in such a particular way as this Act doth, are like *Letters* of *Attorny*, or Licenses of *Alienation*, * *they must be most strictly pursued, and not varied from in the least punctilio*; as was resolved by all the Judges of *England*, *Hill.* 21 *Jac.* in the case of *Penal laws*, *Co.* 7 Rep. *f.* 36, 37. Therefore no other form of Trial ought to be admitted in this Case than what the Statute prescribes, and that is onlie by *good and lawfull men of Middlesex*, not by *Irish* Peers.

21 H. 7. 7 Br Alienation 9. 30 E. 3. 17 Br. Alienation, 23 & 30.

7ly. The Proviso in this Act puts a period to this Case.

Provided always, that if any the Peers of this Realm shall happen to be endicted of any such Treasons or other offences aforesaid, by authority of this Act, that then after such Endictment, they shall have their Tryal by their Peers, in such like manner as hath been heretofore accustomed.

From whence I shall observe these five particulars.

First, that Treasons committed by *English* Peers in forein parts, are tryable here in *England*, within the verie bodie and purview of this Law. Therefore by the selfsame reason, law, and justice, Treasons committed out of this Realm in *Ireland* even by *Irish* Peers, are triable in *England* by this Act, else *Irish* Peers should be quite

out of this Act, and in better condition than *English* or any *Irish* Commoners, who are clearly adjudged within it.

2ly. That Tryal by *Peers*, is saved by this Proviso onlie *to the Peers of this Realm*, which both in the Prologue and body of this Act is expresly stiled *this Realm of England*. But the Peers of *Ireland* are no * Peers at all of this Realm of *England*, as is resolved in 11 *Ed.* 3. *Brief* 473. 20 *E.* 4. 4. *Co.* 7 *Rep. f.* 15, 16. & 9 *Rep.* Lord *Sanchars* case, *f.* 117. *Co.* 3 *Instit. p.* 30. and *Dyer f.* 360. *b.* Therefore no waies within the compass, words, or reason of this Proviso, but clearly secluded out of it, and so not tryable by their Peers. And this Statute prescribing a new way of trial for forein Treasons, not triable here by Peers before, had excluded all *English* Peers from trial by their Peers, by the bodie of the Law, as some conceive, had it not been saved to them by this special Proviso: Therefore certainlie *Irish* Peers who are not provided for at all, and no Peers in *England*, must necessarilie be excluded from their Peerage by it upon their trial here.

* Seldens tit. of Hon. p. 837, 840, 841.

3ly. The reason why this Law doth save the tryal by Peers to Peers of this Realm onlie and to no others (which as some conceived was not saved to them in cases of forein *Treasons* by the Statute of 26 *H.* 8. *c.* 13. as appears by the Lord *Grayes* case hereafter cited) makes an end of the Case in Question, because Peers of the Realm of *England* are Peers in everie shire and Countie of *England*. Therefore by the great Charter of *England*, and all other Acts confirming it, and the Common law it self, they ought to be tried onlie by their Peers within all Counties and places of the Realm of *England*: But *Irish*, *Scotish*, and forein Peers are no Peers in any Countie of *England*, as the forecited Books resolve. Now this Statute enacting, all forein Treasons to be triable not in *Ireland* or any other his Majesties Dominions, but in *England* only; it was necessarie and convenient by this special Proviso to save the Trial by Peers to all *English* Peers to be tryed for forein treasons only in *England*, according to * *Magna Charta*

* Cap. 29. See Cooks 2 inst. p. 48, 49.

Charta and the *Common law*, being their birthright, becauſe they are actual Peers in all places of *England*, and may have *Engliſh* Peers enough at hand to trie them without delay upon all occaſions. But *Iriſh* and other Peers being no Peers at all in *England*, and it being a thing improper to trie them by *Engliſh* Peers being no real Peers to them, and a thing impoſsible to try them here by *Iriſh* or any other forein Peers, for the reaſons formerlie alleged, and this Statute confining the trials within it only to *England*; it had been a direct contradiction and abſurditie to provide, that theſe forein Peers ſhould be tried here by their forein Peers for Treaſons, and not by an ordinarie Jury, becauſe they are neither Peers themſelves in *England*, nor others who ſhould come hither from *Ireland* or other forein parts, who loſe their forein Peerage, as ſoon as they ſet foot on *Engliſh* ground, with relation unto *England*, where their Peerage preſentlie ceaſeth.

4ly, *The Statute is*, *That the trial for ſuch Treaſons, &c. ſhall be in ſuch manner and form to all intents and purpoſes as if they had been committed in* England. Now if *Engliſh* Peers commit Treaſon in *England*, they ſhall by the Statute of *Magna Charta*, *cap.* 29. (yea by King *Johns* Charter, and by the Common law long before, as Sir *Edmund Cook* proves in his Commentary upon it; and I have at large demonſtrated in my * *Plea for the Lords and Houſe of Peers*) be tried onlie by their Peers, and not by any ordinarie Jurie, by *Engliſh* but not *Irish* Peers, as I have formerlie proved. Therefore the ground of ſaving trial by Peers, to Peers of *England* by this Act is, an unanſwerable argument to denie ſuch a trial here to any Peers of *Ireland* by *Irish* or *English* Peers.

* Page 202 to 307.

5ly. The laſt words of this Proviſo determine the caſe in queſtion without more diſpute; *Provided alwaies, that if any Peers of this Realm happen to be indicted of any ſuch Treaſons aforeſaid by authority of this Act they ſhall have ſuch trial by their Peers, in ſuch like manner as hath* **bean heretofore accuſtomed.** It being alwaies the

Custome of England * *since Magna Charta, and long before, in cases of Treason at the Kings sute*, to trie *all English Peers in England only by their Peers*, and such a privilege as * Sir *Edward Cook* holds, *they cannot waive if they would, as it was adjudged in the Lord* Dacres *case, Pas.* 28 *H.* 8. *and since in the Earl of* Castlehavens *ease* 7 *Car.* But on the other side it is most certain, that it hath never *been accustomed heretofore*, that *Irish* or anie other *forein Peers* should be tried for anie Treasons here committed by *English*, *Irish*, or anie other forein Countrie Peers within the Realm of *England*, Nay, no one President of this kind was ever heard of: and it is an impossible thing in point of Law, as I have proved; therefore no such trial by anie Peers can be once thought of or imagined for the Prisoner or anie other Peer of *Ireland*, within the purview or proviso of this Act.

* See my plea for the Lords and House of Peers. p. 202, 203 to 309. where this is largely proved, & p. 424.

* 3 Instit. f. 30.

5ly. I shall adde further *ex abundanti*, to put this case out of all question that I have made some cursorie search into most of the *Irish Annals, Histories, Antiquities, Statutes*, upon this occasion and I should have made a further inquisition had I enjoyed anie vacant hours to do it) yet I cannot find so much as one President of anie *Irish Peer* tried in *Ireland* for Treason, or anie other offence, by his Peers, before this Statute of 35 *H.* 8. and I believe the Prisoners Councel cannot (as indeed they neither did nor could) produce one example of such a trial there, by Peers, before this Law, nor anie Act of Parliament in that Realm before this Statute *concerning Treason*, which provides, *that Irish Peers, shall be tried by their Peers*, there being no such clause or least hint thereof to be found in the Statutes of 18 H. 6. c. 2, 3. 10 H. 7. c. 13. 13 H. 8. c. 1. 28 H. 8. c. 1, 2, 7. which make sundrie offences *Treasons*, and extend to and mention *Irish* **Lords and Rebels** by name, as well as Commons: all and everie of these Acts leaving both the *Irish Peers* and *Commoners* to the self-same trial by a Jury. And since this Act I presume they cannot produce above one president (and that a verie late one in case of Treason) where an

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Irish Peer was tried by his Peers, and it was the case of the L. *Slane*, much about 20 years since there tried and acquitted by his *Peers* in *Ireland*, as I am informed; before which time, *it was then confessed by the Judges there they never heard or read of any one such tryal used in* Ireland; and since it we have heard of no other trial there by Peers, to second it, but onlie of one Noble Lord (the Lord of *Valentiæ*, Vicount *Norris*) there extrajudiciallie condemned by meer *Martial-law* in a Council of War, even in times of peace, by the Earl of *Strafford An. dom.* 1635. but not executed, nor tried by his *Peers* in a legal way: all their *Peers* formerlie being there either attainted *by Act of Parliament*, as is evident by the *Irish* Statutes of 28 *H.* 8. *c.* 1. 3 *&* 4 *Ph. & Ma. c.* 2. 11 *El. c.* 1. 13 *Eliz. c.* 6, 7. 27 *Eliz. c.* 1. 28 *Eliz. c.* 8, 9. 11 *Jac. c.* 4. 2 *H.* 6. *rot. Parl. n.* 8. or executed by *Martial-law*, as soon as apprehended in the Wars, or else slain in actual Rebellion, or pardoned upon their submissions, without anie trial for their Treasons by their Peers.

For Attainders of *Irish Peers*, and other Traitors and Rebels by Act of Parliament in *Ireland*; I find the Earl of *Kildare* with others *attainted for a Treason and Rebellion* (much like this for which the Prisoner stands here indicted) in a *Parliament* held at *Dublin* in *Ireland*, 28 *H.* 8. *c.* 1. Since this *in* 11 *Eliz. c.* 1. *Shan O Neale*, a bloodie desperate Rebel, was attainted by *Parliament* after his death (being hewn in pieces by the *Scots*) and the name of *Oneyle* extingnished, it being made High Treason for anie to assume that name; And I find a *Mac-Mahon* and *Magwire* forfeiting Lands among other Rebels in that Act, which largelie sets forth the Queens Title to *Ireland*, 27 *Eliz. ca.* 1. *James Eustace*, *Viscount of Baltinglas*, was attainted of *High Treason* for a publique Rebellion against the Queen. 28 *Eliz. cap.* 9. I find *John Brown* and near one *hundred* more *Irish-men* by name attainted of *High Treason* by this Act for an *open Rebellion*. In 11 *&* 12 *Isc. C.* 4. I find *Hugh Earl of Tyrone*, *Jury Earl of Tirconell*, *Caconaugh Magwire*, *Mac-Mahon*,

and above 20 more *chief Irish Gentlemen*, attainted of *High Treason* by this Act, for their open *Rebellions*. But for a trial of any *Irish Peer* for anie Treason in *Ireland* by his Peers, I can meet with no president as yet, but that of the Lord *Slane* onlie, and shall be glad to be informed of any other, to parallel it.

Indeed in the printed Statute of 2 *Eliz.* c. 1. made in *Ireland*, *for restoring to the Crown the antient Jurisdiction over the State Ecclesiastical and Spiritual, and abolishing all forein power repugnant to the same*; and in the Statute of 2 *Elizabethæ* in *Ireland cap.* 6. intituled, *An. Act* whereby *certain offences are made High Treason.* I meet with these two clauses concerning the trial of *Irish Peers* for Treasons onlie within these Acts. "And if it "shall happen that anie Peer of this Realm shall fortune "to be endicted of and for anie offence that is made *Pre-* "*munire* or Treason by this Act, that then the same Peer "or Peers so being indicted, shall be put to answer for e- "verie such Indictment before such Peers of this Realm "of *English* blood (*not Irish mark it*) as by the Lord "Deputie, Governor or Governors of this Realm shall "be by Commission appointed under the Broad Seal, "and to have his and their trial by his and their Peers; "and to receive and have such like judgement upon the "same trial of his or their Peers, or making open con- "fession of the same offence or offences, as in other Ca- "ses of Treason and *Premunire* hath been used, or is u- "sed in other Cases of High Treason and misprision of "Treason; Which *later clauses*, As in other cases of "*Premunire* and High Treason hath been used; And as is "used in other cases of High Treason, or misprision of "Treason, *relate only unto those words*; to receive and "have like judgement upon trial; and so onlie to the "judgement and sentence given in these new Treasons "and offences enacted by these Acts: not to the manner of "trial by Peers," which is meerlie a new kind of trial never mentioned in any other *Irish* Acts before these, and restrained onlie to the new Treasons and *Premu-*

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nires ſpeciſied in theſe Acts, in imitation of the * *Engliſh* Statutes made in the ſelf-ſame Caſes; which provide, *a Tryal by Peers for our English Peers*; which was never heard of in any Acts of Parliament in *Ireland* till theſe, and never practiſed that I read of in that Realm, either before or ſince. To clear this up more fully, the Statute of 11 E. 3. c. 4. makes mention *of Prelates, Earls, and Barons in Ireland*, as well as in *England:* And the Statute of 4 H. 5. c. 6. prohibits, *that any one of the Iriſh Nation ſhould be choſen to be an Arch-Biſhop, Abbot, or Prior within* Ireland, *becauſe many of them (againſt a former Act there made) had been made Arch-biſhops, Biſhops, Abbots, Priors, wherby they became Peers of the Parliament in the ſame Land, and brought with them* Iriſh *Servants to the Parliaments and Counſels there holden, whereby the privities of the* Engliſhmen *within the ſame Land have been and be daily diſcoverd within it to the* Iriſh *people Rebels to the King, to the great perill and miſchief of the Kings lawfull liege people in the ſame Land.* And the Statute of 10 H. 7. in Ireland c. 16. enacts, *That the Spiritual and temporal Lords of the Land of* Ireland, *ſhall appear in every Parliament holden in that Land* **in their Parliament Robes**, *in like manner and form as the Lords of the Realm of* England *appear in the Parliaments holden within the ſaid Realm*, under pain of forfeiting 100 *s. to the King: which uſe of Robes they had there for penury omitted by the ſpace of* 20 *or* 24 *years.* But there is no mention of any *Tryal* by their *Peers* in theſe or any other *English* or *Irish Statutes*; but thoſe forecited of 2 Eliz. c. 1. & 6. Yea the Statute of 25 *H.* 6. in *Ireland* c. 28 enacts, *For that there is a Law eſtabliſhed, that* **every Lord** *that is called* **a Lord of the Parliament** *in all pleas perſonal as well as real*, in which amerciaments *do lye, ſhall be amerced* 100 *s. to the great impoverishment of the ſaid Lords, for as much as their lovings are diminiſhed and waſted by war; That* **no Lord of Parliament** *ſhall be amerced from thence forward in the ſaid pleas* **otherwiſe than other perſons**, *notwithſtanding any Law made before to the contrary.* The amerciaments there-

* 1 El. c. 1, 6.

fore

fore of *Irish* Lords and Commons being alike by this Law, it is very probable their *tryals* by Jurie were both alike, and that they were not tryed by their Peers.

Now the Prisoners councel have pleaded in his plea, that *Magna Charta* gives the tryal by Peers in *Ireland*; and no other Law but it: and that it was not accepted, received, confirmed, and used as a Law in *Ireland* till the Statute of 10 *H.* 7. and the words thereof (if it be confirmed by that Act) are most clear in it, *That all Statutes* **late made, &c. from henceforth** *be deemed, accepted, used, and executed within this Realm of* Ireland *in all points*; And if it were made a Law there by the Statute 8 E. 4. c. 1. (which I rather believe) the words of that Act are, *That* **from henceforth** all *other Statutes and Acts made by authority of Parliament in* England, *be ratified, confirmed, and adjudged by authority of this Parliament in their force and strength*, **from the sixth day of** March. So as *Magna Charta* was not a general Law in force, use, acceptance, or execution in *Ireland*, at least amongst the *Irish*, till 8 E. 4. or 10 H. 7. as is evident by these Acts. Because I would leave nothing concealed or unanswered that might make for the prisoners advantage, I must acknowledge, that King *Henry* the 3d. in the first year of his Reign sent a Roll of the liberties which his Father King *Iohn* and he had granted to this Realm of *England* unto *Ireland*, out of his special grace, by unanimous consent of all his Lieges, and confirmed the same to all his Spiritual and Temporal Lords and faithfull Subjects there (for their fidelity to him and his Father) to them and their Heirs for ever, as a signal badge of his favour, by this patent.* *Rex*, *Archiepiscopis*, *Episcopis*, *Abbatibus*, *Comitibus*, *Baronibus*, *Militibus*, *et libere tenentibus et* **omnibus fidelibus suis per Hiberniam constitutis,** *Salutem.* Fidelitatem *vestram in Domino commendantes*, *quam Domino patri nostro semper exhibuistis*, *et Nobis estis diebus nostris exhibiti*; *volumus*, *quod in signum fidelitatis vestræ tàm præclare*, *tam insigniter* **Libertatibus Regno nostro Angliæ a patre nostro et nobis concessis,**

* Pat. 1 H. 3. m. 3.

ceſsis, de gratia noſtra et dono in Regno noſtro Hyberniæ gaudiatis. vos et veſtri imperpetuum: *Quas diſtincte in Rotulum redactas,* **de communi conſilio omnium fidelium noſtrorum** *vobis mittimus, ſignatas ſigillo Domini* Gualonis *Apoſtolicæ ſedis Legati, et fideliſſimi noſtri* Willielmi Mareſcalli.* **Rectoris noſtri et Regni noſtri,** *quia ſigillum nondum habuimus: eoſdem proceſſu temporis* **majorum conſilio proprio ſigillo firmandas.** *Teſte apud* Gloverniam, 3 *die Februarii*: he being * crowned but on the 28 of *October* before at Glouceſter, where this Patent bears date.

* King Hen. being then a Minor and under his Regiment.

* Mat. Paris Hiſt. Angl. p. 278.

After which King *Henry* having ratified the *Great Charter* of Liberties in *England*, in the 9th year of his reign (printed in all our Statutes Books, and in *Cooks* 2 Inſtitutes) in the 12 year he commanded it to be publiſhed openly in *Ireland* by his Writ,* "Rex dilecto et fideli "ſuo R. *Burgo.* Juſtic. ſuo *Hiberniæ*, ſalutem. Mandamus "*vobis* firmiter præcipientes, quatenus certo die & loco "faciatis venire coram vobis *Archiepiſcopos, Epiſcopos,* "*Abbates, Priores, Comites & Barones, Milites, et libere* "*tenentes, & Ballivos ſingulorum Comitatuum*, et coram "eis publice legi faciatis **Cartam Dom. Regis Johannis** "patris noſtri cui ſigillum ſuum appenſum eſt, quam fieri "fecit jurari a Magnatibus *Hiberniæ*, de legibus & conſuetudinibus *Angliæ* obſervandis in *Hibernia*. Et præ"cipiatis eis ex parte noſtra, quod leges illas et conſue"tudines in Carta prædicta contentas de cætero firmi"ter teneant & obſervent. Hoc idem per ſingulos Co"miratus *Hiberniæ* clamari faciatis et teneri *Prohibentes* "firmiter ex parte noſtra, et ſuper forisfacturam noſtram, "ne quis contra hoc mandatum noſtrum venire præ"ſumat, eo excepto quod non de morte nec de catal"lis *Hibernenſium* occaſione nichil ſtatuatur ex parte noſtra "citra quindecem *dies a die* St. Michaelis *anno r. n.* 12. *ſuper quo reſpectum de dedimus Magnatibus noſtris* Hiberniæ, *uſque ad terminum prædictum*: *Teſte meipſo apud* Weſtm. 8 *die Maii anno* 12.

* Clauſ. 12 H. 3. pars 1. m. 8.

In Cooks 3 Inſtit. f. 141. b. 4 Inſtit. p. 329. b.

& in 18 H. 3. Rot. pat. m. 17. n. 21. There is mention made of *Consuetudines & Leges Regni nostri* Angliæ, *quas bonæ memoriæ Dominus* Johannis Rex *pater noster* **de communi omnium de Hybernia consensu teneri statuit in terra illa.** Teste Rege apud Winch. 28 die Octob.

In the 30th. year of *Henry* the third, all Laws and Customs of *England* were established in *Ireland* by this * Patent. *Quia pro communi utilitate terræ* Hiberniæ, *& pro unitate terrarum Rex vult* **et de Communi consilio Regni** *provisum* **est, quod omnes Leges et consuetudines quæ in regno Angliæ tenentur in Hybernia teneantur, et eadem terra eisdem legibus subjaceat, et per easdem regatur,** *sicut* Johan. Rex *cum ultimo esset in* Hiberni **statuit et firmiter mandavit:** *Ideo volumus, quod omnia brevia de communi jure quæ currunt in* Anglia, *similiter currant in* Hibernia *sub novo sigillo nostro, &c. Teste meipso apud* Woodstock, 19 *die Septemb.*

* Rot. Pat. 30 H. 3. m. 3. Sir Iohn Davis Irish Rep. P. 37. Cooks 4 Instit. p. 350. 1 Instit. f. 141. b. Mr. St. Iohns Argument at Straffords Attainder. p. 55.

The Patent of King *Iohn* which this Patent mentions, is that of *Rot. Pat.* 6 Johan. Regis. m. 6. n. 17. never yet printed. *Rex, &c. Justiciariis, Baronibus, Militibus, et omnibus fidelibus suis &c. sciatis quod dedimus potestatem Justiciariis nostris* Hiberniæ, *quod brevia sua currant per terram nostram et potestatem* Hiberniæ, *scilicet* Breve de Recto, *de feodo dimidiæ Militis, et infra; et erit terminus de morte aut post transfretationem* Henrici *patris nostri de* Hibernia *in* Angliam. *Et* Breve de *Nova* disseisina, *et erit terminus post primam Coronationem nostram apud* Cant. Et Breve de Fugitivis et Nativis, *et ejus erit terminus post captionem* Dublin. *Et* Breve *de divisis* faciendis *inter duas villas, exceptis* Baroniis: *Et ideo vobis mandamus et firmiter præcipimus, quod hæc ita fieri et firmiter teneri* * *per totam potestatem nostram* Hiberniæ *faciatis. Teste meipso apud* Westm. 2 *Novemb.*

* Nota.

In the 41. year of his Reig, Claus. 41 H. 3. m. 11. dors. I find this memorable writ, touching the confirmation and Customes of *England* setled in *Ireland*, by assent of the Prelates and great men thereof: Rex Thesaurario et Baronibus de Scaccario *Dublin* salutem.

Quia

Quia de assensu et voluntate Prælatorum & Magnatum terræ *Hiberniæ* dudum fuit provisum et concessum, quod eisdem legibus uterentur in terra illa quibus homines regni nostri utuntur in regno illo; et quod eadem Brevia quoad terras & tenementa recuperanda currerent in terra illa, quæ currunt in regno prædicto, sicut nostis: Et dicta provisio & concessio omnibus retroactis temporibus fuerit obtenta & approbata; miramur quamplurimum, quod sicut ex insinuatione venerabilis patris *Thomæ Lismor.* Episcopi accepimus, emanare permissistis ex Cancellaria *Edwardi* filii nostri in *Hibernia*, contra consuetudinem optentam & formam Brevium in regno nostro usitatam, Breve subscriptum contra præfatum Episcopum in hac verba. *E.* illustris Regis *Angliæ* primogenitus Vic. *Waterford* salutem. Precipe *Thomæ Lismor.* Episcopo, quod juste & sine dilatione reddat *Waltero*: Episcopo *Waterfordi Maneria* de *Archmordeglan*, *Kilmordri* & Motha cum pertinentiis, quæ clamat esse jus Ecclesiæ suæ, & in quæ idem Episcopus non habet ingressum nisi per *Alanum* quondam *Lismor* Episcopum cui Griffinus quondam *Lismor.* Episcopus illa demisit, qui in illa se intrusit post mortem *Roberti* quondam *Lismor.* Episcopi, qui inde injuste & sine judicio disseisuit *Robertum* quondam *Waterford.* Episcopum, prædecessorem Episcopi post ultimum reditum, &c. Quia vero dictum Breve tam dissonum est, et contra leges & consuetudines in Regno nostro optentas, & formas brevium nostrorum ibidem approbatas, præsertim cum Breve ingressus non transeat tertiam personam, nec ratione intrusionis in terram aliquam post mortem alicujus competat actio alicui de terra, illa nisi illi cui per mortem illam jus debetur in eadem: Nec enim dicitur intrusor, qui jure hæreditario, vel ratione Ecclesiæ suæ succedit prædecessori sui in hiis de quibus idem prædecessor fuit seisitus in Dominico suo ut de feodo die quo obiit: Vobis mandamus, quod si dictum Breve a Cancellaria prædicta in forma prædicta emanaverit, executionem ejusdem Brevis supersedeatis; revocantes sine dilatione quicquid per

idem Breve actum fuerit in Curia præfati filii nostri: Teste apud *Wynd.* 27 die Januar. Eodem modo scribitur *Alano la Suche* Justic. *Hiberniæ*,& *Waleranno* de *Welleſly*, & sociis suis Justiciariis itinererantibus, ut supra.

In the 5th year of King *Edward* 3. rot. Pat. 5 E. 3. parte 1. memb. 25 It was enacted in a Parliament that year in *England* amongst other things. *Quod una & eadem Lex fiat tam Hibernicis quam Anglicis, excepta ſervitute Vicagiorum penes Dominos ſuos, &c.* by a Parliament then holden in *Ireland.*

Yet notwithstanding all these Patents, Charters, Acts, the benefit of the great Charter, and of the Liberties, Laws and Customs of *England*, extended not to all *Ireland*, and the Irish therein dwelling; but only to such parts of *Ireland* as were reduced and divided into Counties, and possessed by the English Colonies, and to the English men inhabiting in *Ireland*, and such Irish within the English Pale as lived in due subjection and obedience to the Kings of *England*, or were specially endenized by their Parents to them, not to the Irish Countries and Colonies which were not reduced into Counties, and under the obedience of the Kings of *England*, (amounting to more than two third parts of *Ireland* in extent of Ground) who had no benefit of the Laws or Liberties of *England*; but by special Grants and Charters of indenization from the Kings of *England*, which some Septs of the Irish and others purchased from our Kings, as Sir *John Davis* proves at large in his *Irish Reports*, in the Case of *Taniſtry*, fol. 37, 38, 39. and the Records there cited: To which I shall add these following Records not mentioned by him, fully evidencing this Truth. *Clauſ.* 37. *H.* 3. *m.* 15. *Dorſ. Rex Juſtic.* Hiberniæ *ſalutem. Monſtravit nobis* Mamorth Offerthierim, & Rothericus *frater ejus, quod Anteceſſores ſui & ipſe, licet* Hibernienſes *fuiſſent, ſemper tamen firmiter fuerunt ad fidem & ſervitium noſtrum & prædeceſſorum noſtrorum Regum* Angliæ, *ad Conqueſtum una cum* Anglicis *faciendum ſuper* Hibernienſes. *Et ideo vobis mandamus, quod ſi ita eſt, tunc non per-*

permittas ipsos Mamorth *&* Rodericum *repelli, qui possint terras vendicare in quibus jus habent*, **sicut quilibet Anglicus**. *Quia si ipsi & Antecessores sui se se habuerunt cum* Anglicis; *quamvis* Hibernienses, *injustum est, licet* Hibernienses *sint, quod exceptione qua repelluntur* Ibernenses *a vendicatione terrarum & aliis repellantur*. Teste, *&c.*

By this Record it is apparant, that all Irishmen but those whose Ancestors joyned with our Kings in the conquest of *Ireland*, and were loyal Subjects to our Kings, had no benefit of the Kings Writs and Laws to claim or recover Lands in *Ireland*, in 37 *H.* 3.

Hereupon divers native Irish men purchased several Patents from our Kings, granted out of special grace to enable themselves and their Posterity to enjoy the benefit of the English Laws in *Ireland*, for which I shall cite these few ensuing Presidents instead of many of like nature. Pat 17. *Johan. Reg.* memb. 15. together with

Pat. 12. E. 1. m. 11. *Pro diversis in* Hibernia, *quod uti possint Legibus* Angliæ *in* Hibernia. *Rex omnibus ballivis & fidelibus suis* Hiberniæ *ad quos*, &c. *salutem. Volentes* Giraldo *fil.* Johannis Hibernico, *gratiam facere specialem, concedimus pro nobis & Hæredibus nostris, quod idem* Geraldus *& liberi sui quos legitime procreaverit, hanc habeant libertatem, quod ipsi de cætero in* Hibernia **utantur legibus Anglicanis**; *& firmiter inhibemus, ne quis eos contra hanc concessionem nostram vexet in aliquo, vel perturbet. In cujus* &c. *T. Rege apud* Carnarvan, 30 *die* Maij, *Consimiles literæ habet* Margeria de Lessan, Henricus de Lessan, Petrus de Lessan, Andreas de Lessan, Benedictus *fil.* Johannis, Ardmagh, Willielmus Heuke, Hibernici. In cujus, *&c.* Teste ut supra.

Pat. 18. E. 1. m. 24. *Rex omnibus Ballivis & fidelibus suis in* Hibernia, *ad quos*, &c. *salutem. Volentes* Isamaiæ *filiæ* Oragilig, *&* Matildæ *fil.* Oragilig, Hibernicis, **gratiam facere specialem**, *concedimus pro nobis & haredibus nostris, quod eadem* Isamaia *&* Matilda *ad totam vitam suam hanc habeant libertatem, videlicet, quod ipsæ de cætero in* Hi-

bernia **utantur legibus Anglicanis**: *& firmiter inhibemus, ne quis eas contra hanc concessionem nostram vexet in aliquo vel perturbet: In cujus*, &c. *T. Rege apud* Westm. *12 die* Junii, *per ipsum Regem.*

Pat. 19. E. 1. m. 20. *Rex omnibus ad quos*, &c. *salutem. Sciatis quod de* **gratia nostra speciali**, *concessimus* Willielmo *filio* Carmok. *Clerico*, *quod ipse & omnes posteri sui imperpetuum* **Lege & consuetudine Anglicana utantur in terra nostra Hyberniæ**, *ita quod ipsi per alias leges & consuetudines, per nos & ministros nostros quoscunque de cætero non deducantur contra voluntatem suam, sed quod ipsi, in vita sua & morte de cætero* **libertate gaudeant Anglicana**, *In cujus*, &c. *Teste Rege apud* Atherug. *22 die* Jan.

The like Patent is granted *Mauricio de Bre. Hibernico*, Pat. 24. E. 1. m. 3. These Records, with *Claus.* 2. *E.* 3. *m.* 17. *Rex dilecto & fideli suo* Johanni Darcy, *de* Nevien, *Justiciario suo* Hiberniæ, *salutem. Ex parte quorundam hominum de* Hibernia *extitit supplicatum* **Ut per statutum inde faciendum concedere velimus, quod omnes Hibernici qui voluerint legibus utantur Anglicanis, ita quod necesse non habeant super has chartas aliquas a nobis impetrare.** *Nos igitur certiorari volentes, si sine alieno præjudicio præmissis annuere valeamus, vobis mandamus, quod* **voluntatem magnatum terræ illius in proximo Parliamento ibidem tenendo,** *super hoc cum diligentia perscrutari faciatis, & de eo quod inveneritis, una cum vestro consilio & advisamento nos distincte & aperte cum celeritate qua potestis, certificetis, hoc breve nostrum nobis remittentes*: which compared with *Claus.* 5. E. 3. part 1. m. 25. *Pro hominibus terræ* Hiberniæ *de Lege* ANGLIÆ UTENDA *in custodiis recuperandis*, &c. are an unanswerable evidence beyond contradiction, That the great Charter, Liberties, Customs and Laws of *England*, granted to those of *Ireland* by King *John*, *Henry* the third, *Edward* the first and third, extended only to the English Subjects inhabiting *Ireland*, and to such Irish who lived in English Counties in due subjection to the Kings of *England*, or were by special Charters of indenization enabled to enjoy the benefit of them; who were

but

but few in consideration of the rest of the Irish Nobility, Gentry and Commons, retaining their ancient *Brehon Laws*, and would not submit to the Laws of *England*, nor Government of our Kings, against whom they frequently rebelled, being reputed rather *Enemies* than *Rebels*, and usually so stiled in the Statutes of *Ireland*, till the Statute of 33 *H.* 8. *c.* 9. as appears by the Statutes of 18 *H.* 6. *c.* 3. 25 *H.* 6. *c.* 4,5. 28 *H.* 6. *c.* 1. 3 *E.* 4. *c.* 2. 5 *E.* 4. *c.* 6. 18 *E.* 4. *c.* 2. 10 *H.* 7. *c.* 9, 10, 17, 19. 28 *H.* 8. *c.* 11. & by Sir *John Davis* Irish Reports in the Case of *Tanistry*, fol. 39. the common Laws and Statutes of *England* being not universally received or established throughout the whole Realm of *Ireland*, till after the Statutes of 3 and 4 *Phil.* and *Mar. c.* 3. 11 *Eliz. c.* 9. and King *James* his Proclamation in the third yeer of his reign: or at leastwise till the Statutes of 8 *E.* 4. *c.* 1. or 10 *H.* 7. *c.* 22. which established all the Statutes made in *England* concerning or belonging to the good of the same, only as to the Englishry, or English Pale and Counties, not to the Irishery, as the Statutes of 17 *H.* 7. *c.* 8, 9, 10, 11, 13, 17, 19. 35 *H.* 6. *c.* 3. 5 *Ed.* 4. *c.* 3, 4, 5. 13 *H.* 8. *c.* 3. 28 *H.* 8. *c.* 15. made in *Ireland*, with other Acts resolve, which the Lord *Magwire* confesseth in his Plea, and his Council cannot deny. Now the Lord *Magwire* being none of the English Pale, or Irish Septs Liege-Subjects to our Kings, but of the Irishry, and professed Enemies to our Kings, as the Irish Annals and Statutes inform us; the Statute of *Magna Charta*, and the Laws, Liberties and Customs of *England*, granted to the English and loyal Irish Subjects in *Ireland*: and so this trial by Peers, could not extend to his ancestors till after the Statutes of 8 *E.* 4. or 10 *H.* 7. & of 35 *H.* 8. *c.* 1. yea after the Statutes of 3 and 4 *Ph.* and *Ma. c.* 3. and 11 *Eliz. c.* 9. for reducing the Irishry into Counties, and under the Laws and Statutes of *England* to which they were not formerly subject. And from these Patents of King *John* and *Henry* the third forecited, and the Statutes of 8 *E* 4. and 10 *H.* 7. till 35 *H.* 8. *chap.* 1.

No

No one president of any one Irish Peers trial by his Peers in *Ireland* in any case whatsoever, can be produced. Therefore certainly there was no such trial known or in use in *Ireland*, before 35 *H.* 8. nor any president of it since till one of late; and *una Hirundo non facit Ver.*

If then the Peers of *Ireland* before the making of this Act of 35 *H.*8. were never actually tried by their Peers for any treason done in *Ireland*, for ought can be proved, and there be no expres's Act for any trial by Peers there, for any Treason, but only the Act of 2 *Eliz. c.* 1. and 6. and that only for special Treasons within those Laws, which are none of those for which the Prisoner stands here indicted; I may safely conclude, That this Law of 35 *H.* 8. never intended to preserve to Irish Peers a trial by their Peers in *Ireland*, which kinde of trial was never before had, used or practised in that Realme: and therefore the Prisoner shall be tried by an ordinary Jury at this Bar, not by his Irish Peers; because, if he were in *Ireland*, (for ought appears yet to me) he should not be tried by his Peers there; and in both these points, the Book in *Dyer*, (the only Authoriry which seems to be strongest against, is for me) the words whereof are these in English. The grand *Chancellor of* Ireland *moved this question to the Queens councel*, *If an Earl or Lord of* Ireland, who commits *Treason in* Ireland *by rebellion, shall be arraigned and put to his trial in* England *for this offence by the Statutes of* 26 H. 8. c. 13. 32 H. 8. c. 4. 35 H. 8. 2 or 3 E. 6. And it was held by *Wrey*, *Dyer* and *Gerrard* Attorney General, *That he could not*. Mark now their reasons; *for he cannot have his trial here by his Peers*, (which is a full resolution in point of my third Question, agreeing with what I have endeavoured with Arguments to prove, and is an unquestionable Truth, which I submit to:) Then it follows, *Nor can he be tried here by any Jury of twelve*; (mark the reason, *Not* because he is a Peer of *Ireland*, and therefore ought to be tried by his Peers, and not by a Jury; for that had been full against me,

and

and it is now the only knot in question) but *because he is not a subject of* England, *but of* Ireland, *and therefore he shall be tried there*; which reason (extending as well to an Irish Commoner as Peer) hath been since adjudged directly false, absurd, and against the Law, both in *Orourks* Case, and in Sir *John Parrets* Case, and since in *Mac-mahons* Case: and Sir *Ed. Cook* informs us in his Institutes on *Lit. f.* 261, that *Wray* himself in *Orourks* Case (where this Opinion of his was vouched) *did openly disclaim, that ever he delivered any such opinion as this, but ever held the contrary to it*; and so it is a misreport in this particular: After which the Book concludes thus, *And it is said, that the usage* (to wit in *Ireland*) *to attaint a Peer, Is by Parliament* **and not by Peers**; which comes full in *terminis* to what I have last insisted on, and I am certain cannot be disproved. Wherefore this authority in *Dyer*, as to all that is truth and Law in it, is wholly for me in the reason of the Law; and against me only in what hath been since adjudged to be no Law. I shall close up all with a stronger Case and authoritie than this in question, which will over-rule this case, and that was in *Trinity* Term An. 33 *H.* 8. in the *King's Bench.* *Edward* Lord *Gray* immediatly before having been Lord Deputie in *Ireland*, was endicted, arraigned, and attainted of *High Treason* by an ordinary Jurie in the *Kings Bench* in *England*, for letting *divers Rebels out of the Castle of* Dublin, *and discharging* Irish *hostages and pledges that had been given for the securing the peace of* Ireland; *and for not punishing one who said, the King was an Heretick, whilest he was Lord Deputy in* Ireland: For these Treasons (all acted and committed in *Ireland*) through an *English Peer*, he was tried by an ordinary Jury in *England* by the Statute of 26 H. 8. c. 13. ratified in *Ireland* by 28 H. 8. c. 7. forecited; which secluded him from his tryal by *Peers*, being not saved by these Acts. Therefore a *Fortiori* shall these Statutes and this of 35 *H* 8. c. 2. & 5 E. 6. cap. 1. made since his judgement, exclude this *Irish* Lord being no *English Peer*, from any tryal by his Peers.

*Mr. St. Johns argument at Straffords Attainder, p. 37, 53.

Finally, the *Prologue* of this Statute coupled with the body thereof puts a period to this question beyond all doubt or dispute. *For as much as* **some doubts and questions have been moved**, that *certain kinds of Treasons &c. committed out of the Kings Majesties Realm of* England, *cannot, nor may by the Common laws of this Realm be inquired, heard and determined within this his said Realm of* England. *For* **a plain remedy, order, and declaration therein to be had and made, be it** enacted, &c. *that all manner of Treasons, &c. committed by any person or persons out of this Realm of* England **shall be from henceforth** *inquired of, heard, and determined by the Kings Justices of his Bench*, &c. *by good and lawfull men of the same Shire, where the said Bench shall sit and be kept, in like manner and form* **to all intents and purposes** *as if such Treasons had been done within the same Shire, where they shall be so inquired of, heard and determined.* The sole scope, end, purpose then of the King and Parliament in this Act, being to take away *all doubts and questions formerly* moved *in point of Law, touching the tryal of treasons done out of the Realm*, before the Kings Justices of his Bench and Commissioners in *England by a Jury*, and *to make and enact a plain remedy and declaration therein for the future*, in manner aforesaid, I humbly apprehend, *there can be no doubt nor question now moved*; whether this Prisoner ought to be tryed by his Peers in *Ireland* or *England* for this his most horrid Treason *committed out of the Realm of* England, since this Statute so clearly declares and resolves the contrary in most plaine and positive words. The rather, because the Kings Patent creating him Baron of *Ineskellin* under the great Seal of *Ireland*, maketh him only a *Peer in Ireland*, and gives him only **a Place and Voyce among the Peers and Nobles of Ireland, in the Parliaments of Ireland**, not in *England*, as he sets forth in his own* *Plea* in precise terms; as the Patent made by King *Edward* the 4th. to *Robert Bold* created him *Baron* of *Rathtauth* in *Ireland*, and constituted him, *Unum Dominum & Baronem omnium & singulorum Parliamentorum*

* Here p. 2.

*Rot. pat. 8 E. 4. in Cancel. Hiberniæ; Mr. Seldens titles of Honor. Booke 2. c. 6. p. 840, 841.

&

& magnorum Conciliorum nostrorum **in terra nostra Hiberniæ** *tenendorum: habendum, tenendum una cum* titulo, *titulo, nomine, honore, loco et sessione inde sibi et hæredibus suis masculis imperpetuum.* And as King *Henry* 8. made *Thomas Viscount Rochford* by the self-same Patent both *Earl of Wiltshire*, **infra regnum nostrum Angliæ**; and *Earl of Ormond* **in terra et dominio nostro Hiberniæ** only, with several clauses of investitures; several *Habendums*, and several Creation-monies for each Title and Kingdom: And as the Patents of all other *Irish Earls, Viscounts, Lords, and Barons in* Ireland, create and make them *Peers only in* Ireland, not in *England*, as * learned Mr. *Selden* informs us, and their very Patents resolve *in terminis.* And therefore quite exclude the Prisoner and all other *Peers* of *Ireland* from any tryal by their Peers in *England*, either by the Proviso or body of this Statute, or their Patents which are point-blanck against it.

* Pat. 21 H. 8. pars 2. 8 Decemb.

* Titles of Honor, Book 2. c. 6, 7.

And now, I hope, I have fully made good the point in question, with all the several branches of it, *That this Act extends to Treason committed in* Ireland; Yea *to Irish Peers as well as to* Irish *Commoners; and that there can be no tryal at all upon it here of an Irish Peer by Irish Peers, nor in any place else within England*; and *that only* (as the Prisoners case is) *by* a *Middlesex Jury.* And so I have finished my assertive part.

The first and grand objection is, that which I meet with in the beginning of this Prisoners plea; The Statute of *Magna Charta*, c. 29. **That no Freeman shall be taken or imprisoned or disseised of his Freehold, &c.** nor will we pass upon nor condemn him, but by the lawfull judgment of his Peers, *or by the law of the land*: which Law and Statute is among others, established for a Law in the Kingdom of *Ireland*, there to be put in ure at all times when need is, by the Statute made in the Parliament held at *Droghedah* in Ireland, in the 10th year of King *H.* 7. *c.* 22. and by vertue of these two Laws he ought to be tryed by his Peers in, or of *Ireland*, in this sute against him by and for the King.

Object. 1.

To which I shall give these satisfactory Answers.

Answ. 1. That the Statute of *Magna Charta* in its original creation and confirmation, was made, granted to the *Archbishops*, *Bishops*, *Abbots*, *Priors*, *Earls*, *Barons*, *Towns*, *and to all the Free-men of this our Realm of* England, *and to them only*, *to be kept in our* **Kingdom of England** *for ever*, whence it is intituled, *The great Charter of the Liberties of England*, as the prologue of it resolves. The first *Chapter thereof is peculiar to the Church of* England, *viz.* **That the Church of England** *shall be free and enjoy all her rights and liberties inviolable.* We have *also granted to our Free-men of our Realm of* England *these liberties under-written, to have and to hold to them and their Heirs, of us and our heirs for ever:* So cap. 12. *The City of* London *shall have all her old Liberties and Customs*, and all other Cities, Boroughs, Towns, and the *Barons* of the Cinque ports, and all other ports shall have all their Liberties and their Customes. Cap. 35. *One measure of wine*, &c. *shall be throughout our Realm.* Ch. 32. All Merchants (if they were not openly prohibited before) shall have safe and sure conduct to depart out of *England*, to come into *England*, and to tarry in *England*, as well by Land as by water, &c. In Cap. 23. "All Weeres shall be utterly put down "between *Thames* and *Medway*, and throughout all "*England*: and the conclusion, C. 37. concerns the Realm "of *England* and *Englishmen* only. Neither doth the* Charter of King *John*, nor that of the 11 *of H.* 3. *nor* 18 *H.* 3. *m.* 17. *nu.* 21. *nor* of 30 *H.* 3. *nor yet of* 13 *E.* 1. *cited in* Co. 4 *Institutes*, *p.* 349, *and* 350. *and in his Institut. on* Littleton, *f.* 141. establish *Mag. Char.* at least in relation to all the Native *Irish* but *English* alone, it being made particularly for the Realm of *England* and *English-men*: and therefore the Prisoner pleads, it was setled there only as a Law to be received and put in use (in respect of the *Irish* then living only in the *English* pale and the Kings loyal Subjects, not of any *Irish* enemies in hostility) by the Statute of 10 H. 7. c. 22. but not before: and so

* Here p. 32, 33, 34.

is

is Sir *Ed. Cooks* opinion in expreſs terms in his 4 *Inſtitut. pag.* 353.

By which it is moſt clear, That from King *Henry* the ſecond s dayes, (who firſt ſubdue *Ireland*, An. 1171.) there were no trials in *Ireland*, of any Engliſh or Iriſh Peers Subjects to our Kings, for Treaſon by their Iriſh Peers by vertue of *Magna Charta*, till after the Statute of 10 *H.* 7. which was made but forty ſix yeers before the Statute of 35 *H.* 8. between which, and this later Law we read not of one trial of any Iriſh Peer for treaſon there by his Peers, nor yet ſince, that I can find (but only one of late by 2 El. c. 1, 6.) till this very day: By which it is moſt apparent, that this tryal by Peers in *Ireland* (a privilege now inſiſted on) was never actually claimed or enjoyed by any Peer of *Ireland*, eſpecially by thoſe in antient emnity and rebellion againſt our Kings, ſtiled * *enemies* in the *Iriſh* Statutes, and *Engliſh* Records before the Statute of 35 H. 8. and ſo it can be no prejudice nor injuſtice at all, nor breach of *Magna Charta*, to out the Priſoner of it. * Here p. 35

2ly. It may be queſtioned upon very good Reaſons, whether the Statute of 10 *H.* 7. *ch.* 22. doth confirm this Statute of *Magna Charta* in *Ireland* or not? at leaſt as to Iriſh Peers, eſpecially thoſe of the old Iriſh Bloud (to whom it relates not, as I have proved in the point of trial by Peers,) and that upon theſe Grounds.

Firſt, becauſe the words of that Statute are not, That *all Laws made in* England *ſhall be confirmed, received and executed in* Ireland *in all points*: but, That *all Statutes late made within the Realm of* England, *concerning or belonging to the Commonweal* (*not Peers*) *of the ſame, ſhall henceforth be deemed good and effectual in Law, and received & executed in this Realm of* Ireland. Now *Magna Charta*, being no Law then *late made within this Realm*, but made at leaſt 271 years before it, can hardly (without much ſtraining of the words beyond their proper meaning) be brought within the compaſs of this Act, though Sir *Ed. Cook* in his fourth Inſtitutes, *pag.* 351. informs us, That *Hil.* 10 Jac. *it was reſolved by the two chief Juſtices and chief Baron, that this*

word LATE *in this Act, hath the sence of* BEFORE, *and shall not be taken in its proper sence or meaning*: so that the Act by this construction, against the sence of the words, extends to *Magna Charta*, and to all the Acts of Parliament made in *England*, not only *late*, but even long *before*; yea, many hundred yeers before this Act; which for my part (under the favour of those Reverend Judges who thus interpret it) I hold still disputeable, yea, erronious, and no Law at all, especially for these two Reasons.

1. Because if any Law introduced and confirmed *Magna Charta* and the other Laws of *England* in *Ireland*, it is the Statute of 8 *E.* 4. *c.* 1. which confirms the Statute made in *England* in the Parliament of 6 *R.* 2. *ch.* 6. concerning Rapes, of which there was some doubt made *whether it extended to Ireland*? and then concludes thus: *In avoyding of all inconvenience that might happen, because of the ambiguity of the said Statute, Be it enacted, confirmed and ratified by authority of the said Parliament, that the said Statute be adjudged and approved in force and strength, and may be of force in this Land, from the 6th day of* March *last past; and that from henceforth, the said Act,* **and all other Statutes and Acts** made *by Authority of Parliament within the Realm of* England, *be ratified, confirmed and adjudged by Authority of this Parliament in their force and strength, from the said 6th day of* March. So that this Law, if any at all, confirmed *Magna Charta*, and all the Statutes made by Authority of Parliament in *England*, to be in force and use in *Ireland*, (yet only as to the English & Irish Subjects under the Kings obedience, and none else, as I have proved,) and this Statute of 10 *H.* 7. which confirms only the Statutes lately made, must and doth in truth and reason relate only to the Laws made in *England* since that Statute of 8 *E.* 4. *c.* 1. not formerly there confirmed by that Act: so that the Prisoners Plea, That *Magna Charta* was confirmed by 10 *H.* 7. is but a meer mistake and a void Plea: neither are the Judges here bound to take notice of this Irish Act of 8 *E.* 4. *c.* 1. unless pleaded by the

the Prisoner, being no Law of this Kingdom and not binding here.

2. Because the forementioned Charters of *6 *Joh.* 12. and 30 *H.* 3. *&c.* confirming the use of the Laws of the Realm of *England* in *Ireland*, did not extend to settle *Magna Charta* there, (at least wise not as to the benefit of the natural Irish, but to the English and the Irish within the English Pale alone) as is agreed by Sir *Ed. Cook*, and in a manner resolved by this Act of 10 *H.* 7. as the words thereof, *From henceforth be deemed good and effectual in the Law, and over that be used, accepted and executed within the Land of* Ireland, *in all points, at all times requisite*, import. And if those Charters extended not to *Magna Charta*, which are fuller then this Act, I doubt this Law will hardly do it. * Here p. 32, 33, 34.

3ly. Admit the Law of 10 *H.* 7. extends to *Magna Charta* in some particulars thereof formerly used in *Ireland*, yet it reacheth not to the trying of Irish Peers by their Peers now in question, for these ensuing Reasons.

1. Because trial of Irish Peers, by their Peers in *Ireland* was never used nor heard of, nor is there any one instance to be found before or since *Magna Charta*, till 10 *H.* 7. which there setled that great Charter for a Law, nor from 10 *H.* 7. till 35 *H.* 8. nor since that, but of late in one case only about twenty yeers since, till this instant. Now what *Littleton* notes of the Statute of *Merton*,* Sect. 108. "That no action can be brought up- * See Cook ibid.
"on that Statute for a disparagement, for that since the "making of it, it was never seen nor heard, that any such "Action was brought upon it against the Guardian: and "if any Action might have been brought upon this mat- "ter, it will be intended that sometime it would have "been put in ure. The like shall I say concerning *Magna Charta*, and the trial of Irish Peers by their Peers in *Ireland*, That if the trying of Irish Peers by their Peers had been the common Law of *Ireland*, or if *Magna Charta* and 10 *H.* 7. had established it there for a Law, it would

would some time or other have been there put in ure, and some Peers there would have claimed and enjoyed this their priviledge in point of Trial: but since it was never yet in use there, for ought I finde, nor any one can prove, before 35 *H.* 8. I cannot deem it the common Law, nor Priviledge of the Peers of *Ireland*, but the peculiar Priviledge of our English Peers, both by the common, Statute-Law, and great Charter of *England*, and no trial of right incident to Irish Peers as it is to English. Therefore this kinde of Trial neither is confirmed to, nor intended to be conferred on Irish Peers by *Magna Charta*, which is but a confirmation only of our * common Laws of *England*, and no introduction of any new Law here; and so should introduce no new Law there, but confirm the common Laws and Customes there formerly used and so the Tryal by Peers is not there setled in respect of the *Irish* Peers, by the Statute of 10 *H.* 7. Now that which principally confirms me in this opinion is the two special Acts of Parliament, made in *Ireland* in 2 *Eliz.* c. 1. & 6.* already cited, which create a special form of tryal of *Irish Peers*, not by their Peers there of *Irish* blood, but by their Peers of that *Realm of the English* blood alone, only in the new *Treasons* and *Premunires* specified in and created by those two Acts; but in no other Treasons: Which clauses had been merely nugatory and superfluous had the Tryal of *Irish* Peers in *Ireland* by *Irish* Peers been the birth-right and known priprivilege of *Irish* Peers, either by the Common law there used, or by the Custome of *Ireland*, or by *Magna Charta*, with this Act of 10 *H.* 7. confirming it; It therefore never being the intent of this Act, nor of *Magna Charta*, to grant any new privilege or form of Tryal to *Irish* Peers, which they never formerly enjoyed, neither the one nor other will sufficiently support the Prisoners plea; nor indulge him any tryal here or there by his Peers of *Ireland* (at least of Irish blood) for so horrid a Treason as this; Which I hope is a satisfactory answer to this *objection, since Custome is the best Expositer of all*

Co. 2 Institit. Proem.

* Page 30.

an-

antient Laws, as Sir Edw. Cook declares in his *Commentary on Littleton*, ſect. 108. *f.* 81. *b.*

4ly. Admit the Objection true, That *Magna Charta* extends to *Ireland*, by vertue of this Act of 10 *H.*7. ſo far as to give Iriſh Peers in *Ireland*, (though not of the Engliſh Pale) a trial by their Peers, which they had not before its confirmation there; yet then I anſwer, That this Statute of 35 *H.* 8. *ch.* 2, upon which the Priſoner is arraigned, by making all Treaſons done and perpetrated in *Ireland*, triable in *England*, when there is juſt occaſion, (as now there is in this time of a univerſal horrid Rebellion, and in ſundry other forementioned reſpects) repeals this Clauſe of *Magna Charta*, and deprives the Priſoner of the benefit of his Peerage, if at all conferred on him by it, and the Act of 10 *H.* 7. Since it is moſt certain, that Statutes made in the Parliaments of *England*, (being the ſupreme Kingdom and Court, to which *Ireland* & its *Courts* are ſubordinate, and whoſe erronious judgements in their High Courts and Parliaments there, were only reverſible here in *England* in the *Kings Bench* and *Parliament* of *England* as is evident by *Clauſ.* 7. *H.* 3. *par.* 2. *m.* 10. and *Clauſ.* 29. *E.* 3. *m.* 12. 8 *H.* 6. *rot. Parl. n.* 69. *Cooks* 4 *Inſtit. p.* 356. Mr. *St. Johns* Argument at Law at *Straffords* Attainder, *p.* 58, 61. *Keilway*, f. 202. *b.* *Br. Error*, 127. *Fitz. Nat. Bre.* f. 24. *Co.* 7 *Rep. f.* 18. *a* *Calvins* Caſe) do oblige thoſe of *Ireland*, not only before but ever ſince 10 *H.* 7. when *Ireland* is either particularly named, or generally included, as is agreed by *Raſtals* Abridgement, title *Ireland*, 11 *E.* 3. *chap.* 2. and 10 *E.* 3. *chap.* 8. 4 *E.* 4. *chap.* 1. 3 *H.* 7. *chap.* 8. 14 *H.* 4. *Raſtal* Parceners 2. 27 *E.* 3. of the Staple, *chap.* 1, 18 14 *Eliz. chap.* 5. 1 *H.* 7. *aſſ.* 3. 3 *H.* 7. *fol.* 10. 2 *R.* 3. f. 12. and *Cooks* 7 *Report. Calvins* Caſe, *f.* 17, 22, 23. 4 *Inſtit. p.* 35. it being ſo reſolved as to this purpoſe by all the Judges of *England* in *Orourks* and Sir *John Parrets* Caſes, cited in *Calvins* Caſe, and adjudged in *Mac-mahons* Caſe tried at this Barr the laſt Term, that this Act of 35 *H.* 8. *c.* 2. bindes thoſe of *Ireland* for Treaſons there committed, &

makes them subject to a trial here, whether Peers or Commoners, as I have already proved.

5ly. It is unquestionable, That every Commoner of *Ireland*, hath as large, as full an interest in *Magna Charta*, the Laws and Priviledges of *England* and *Ireland*, and as much right to be tried in *Ireland* for Treason there committed by an Irish Jury, as any Peer in *Ireland* hath in or by them to be tried there by his Peers, these Laws being no respecters of persons, and every mans birth right alike, of Commons as much as of Peers, as the Laws and great Charter of *England* are; *Magna Charta*, being as largly made and as amply granted to the meanest Freeman as to the greatest Peers of *England* and *Ireland*, as the Prologue and 9, 14, 15, 19, 21, 22, 26, 27, 29 Chapters thereof resolve.

Since then this Act of 35 *H.* 8. *chap.* 2. doth without all controversie (as hath been resolved in the forecited Case) deprive the Commoners of *Ireland* of a Trial in *Ireland* by Irish Commoners, and subjects them to a trial by an English Jury here for Treasons there committed; for which by the common Law, the Customes of *Ireland* and *Magna Charta*, before the Statute of 26 *H.* 8. and this Act of 35 *H.* 8. they could be no where tried but only in *Ireland*, not in *England*, as is collected from the Case of Sir *Elias Ashburnam*, Tr. 18 *E.* 3. *coram Rege*, Rot. 14. cited by Sir *Edward Cook* in his 4 *Instit.* p. 356. (the principal case that can be objected against me, which makes nothing to the purpose, being long before these Statutes were made:) Therefore by the self same reason it shall take away the trial of Irish Peers in *Ireland* and *England* by Irish or English Peers, for Treasons perpetrated by them in *Ireland*, and subject them to a trial by an ordinary English Jury at this Bar, or before Commissioners in any County of *England*, as I have already proved; which Jury here are in truth Peers to all Irish Peers, being here no Peers at all, but onely Commoners.

Object. If it be objected, That this Law of 35 *H.* 8. *chap.* 2. cannot

cannot abrogate *Magna Charta*; all *Acts* and *Judgements againſt* Magna Charta *being declared voyd:* by 25 E. 1. ch. 1. 2, 4. 28 E. 1. ch. 1. & 42 E. 3. ch. 1. Therefore it ſhall not take away the tryal by Peerage from *Iriſh Peers.*

I anſwer 1. That you may by like reaſon object, that it cannot take away a Tryal in *Ireland* by an *Iriſh* Jury from *Iriſh* Commoners, ſeeing it cannot repeal *Magna Charta* and the Common-law; But this objection is yielded, and adjudged idle in caſe of an *Iriſh* Commoner; therefore it is, and muſt be ſo in caſe of an *Iriſh* Peer. *Anſw.*

2ly. The objected Statutes do make void and null all Acts and Statutes made againſt *Magna Charta* before the Parliaments wherein they were made; but they extend not at all to future real Parliaments and their Acts, ſubſequent Parliaments having alwaies had power to control, alter, abrogate precedent Acts; yea the very Common-law and *Great Charter* it ſelf, when inconvenient or defective, as all our Books accord: Therefore Sir *Edward Cook* in his 4 *Inſtitutes p.* 42. reſolves and proves at large, by 11 R. 2. c. 3. 5 rot. Parl. n. 22. 48, 49. 1 H. 4. c. 3. 2 H. 4. c. 22. 21 R. 2. c. 16. 1 H. 4. n. 48. 70. 144. 21 R. 2. n. 20, 21. 36, 37, 85, 86, 89, 90. that Acts (yea and Oaths) *againſt the lawfull power of ſubſequent Parliaments, that they ſhall not repeal ſuch and ſuch Laws* (*though miſchievous or unjuſt*) *bind not at all, and are meerly idle*; For *eodem modo quo quid conſtituitur, diſſolvitur*; thoſe who have power to make any Laws, having as great, as full a power to controll, alter, or repeal them when they ſee cauſe and neceſsity for it, as you may read in *Raſtals* and *Poultons Abridgements* of *Statutes*, and the Statutes at large, repealing former Acts: and how often *Magna Charta* hath been altered, ſupplied, or * repealed in ſome particulars, in and by our Parliaments ſince its making, by ſubſequent Acts both by preſcribing, creating new *impriſonments, forfeitures, corporal puniſhments, fines, executions, treaſons, capital offences* & *cuſtoms, impoſts*, not then known, or different waies or places of *tryal* not then in uſe, in Ca-

* See Horns Mirrour of Juſtices, p. 314, 315.

ſes of forein Treaſons and the like, by a Jury in *England* not then uſual, but ſince confirmed by the Statutes of 26 H. 8. c. 13. 28 H. 8. c. 25. 33 H. 8. c. 27. 35 H. 8. c. 2. 5 & 6 E. 6. c. 11. contrary to or *different from *Magna Charta*, and the Common law, 2 E. 6. c. 24. is ſo well known to all Lawyers that I will not ſpend breath to prove it.

*See an exact Abrigement of the Records P. 372, 379, 380.

3ly. I anſwer, that this Act of 35 *H.* 8. doth both alter and in ſome ſort repeal *Magna Charta*, and the Common-law, as to the point and place of trying *forein Treaſons* in *England* it ſelf, as to Engliſh, Peers and Commoners, to whom alone the great Charter was firſt granted, they being not tryable in *England* by *Iury* or *Peers*, for any forein treaſons by the Common-law, or great Charter. Therefore a *Fortiori* it muſt both alter and repeal the Common-law and great Charter as to *Iriſh* Subjects, for whom the great *Charter* was never originally made, not yet directly confirmed to them by 10 *H.* 7. but only implicitly and doubtfully at moſt, as I have proved.

4ly. I anſwer, that this Act of 35 H. 8. doth no waies abrogate or alter *Magna Charta* in truth or reality, but rather ratifie & confirm it, in the form and manner of this Tryal, though not in the place. For *Magwire* being only a Peer in *Ireland*, but not in *England*; Every Free-man of *England* that ſhall be impanneled to try him, is in truth & law his *Peer* here: And this Act, enacting that he ſhall be tryed, not by Marſhal-law, or the Judges themſelves, *but by good and lawfull men of the Shyre, where the Kings Bench ſhall ſit*, who are his equals and Peers in *England*, and ſaving the *Tryal by Peers* to every *Peer of this Realm* after his indictment found by Jury: This way and form of tryal by Jury in *England* being then and now the Law of the Land, is no contradiction or repeal at all, but a direct purſute and confirmation thereof, according to its letter & meaning. And ſo much in anſwer to this grand objection, wherein I have been over tedious, but ſhall recompence it with brevity in the remainder.

Object. 2. The ſecond Objection (a meer branch of the former) is this.

That

That if *Irish Peers* ſhould be tryable by an ordinary Jury within this Law for Treaſons done in *Ireland*, this might prejudice the whole Nobility of *Ireland*, who by colour of this Act, might be ſent for out of *Ireland* and tryed here for Treaſons, Miſpriſions, and concealments of Treaſons there committed, and ſo quite deprived of their birth-right of tryal by their *Peers*, which would be of dangerous conſequence. *Argument 2.*

I anſwer 1. That I have manifeſted, that this tryal by *Peers* was never deemed, claimed, nor enjoyed in *Ireland*, as a privilege by *Iriſh Peers*, nor ever uſed or practiſed in that land before this Act, & but once claimed ſince, and that in *Ireland*. Therefore it cannot be intended that this Statute or the makers of it ever imagined to ſave this manner of Tryal by *Peers* only to *Irish Peers*, which they never enjoyed, nor ſo much as once claimed or poſſeſſed before the making of it. Neither can it be any injury or injuſtice to deprive them of that now they never heretofore claimed, uſed, enjoyed, as their privilege, and birth-right, being not indubitably ſetled on them by any Law that I have ſeen; but only in ſome ſpecial Caſes of Treaſon ſince 35 *H.*8. wherof this is none by the late Acts of 2 *El.z. c.* 1. & 6. when as this privilege is taken from them, not by a bare ſtrained expoſition, or implication, but by this expreſs Act of Parliament made long ſince for the Common good and ſafety of *England* and *Ireland*, not yet repealed. *Anſwer.*

2ly. This Objection with as great or greater ſtrength colour, might be made for all the Commons of *Ireland* (far more numerous and conſiderable than their *Peers*) they being deprived by it of tryals by *Irish* Juries in their native Country, than for *Irish Peers* alone; which Tryal here againſt *Irish* Commons was never of late excepted againſt, this Law having been ſo often adjudged to reach to them; Therefore there is no colour, to exempt *Irish Peers* out of it.

3ly. This pretended prejudice to *Irish Peers* in point of Tryal by their *Peers*, is ſoly in caſes of *High Treaſons*,

or *Misprision* and *concealments of it*, and no other, the Statute extending to no crimes, but these alone. Therefore the mischief is not great in general; and no *Irish Peers* (I presume) but such who have trayterous or disloyal hearts, will deem it a disparagement or injustice to them, to be secluded of a Tryal by their *Peers* only in these Cases of High Treason: And if others who are professed Rebels and Traytors murmur at it (as none else will) we need not much regard it, nor prefer their pretended privilege, before our own Kings, Kingdomes, Religions, yea *Irelands* safety and wellfare, in bringing them to a speedy tryal and condign punishments for their Treasons here in *England* by vertue of this Law.

3ly. Even by the very Common law before this Act, Treasons committed in *Ireland* by Peers or Commons, were tryable before the Marshall of *England*, in *England* it self, as is evident by the Parliament Roll of 2 H.6.r.9.* Where *John Lord Talbot*, being the Kings Lieutenant in *Ireland*, accused *James Bottiler* Earl of *Ormond*, of certain Treasons (there particularly recited) by him committed in *Ireland*, before *John* Duke of *Bedford* Constable of *England*, in his Marshals Court; Which accusations the King, by the advice of his Parliament, did discharge and abolish, to appease the differences between them: Upon which else he might have been proceeded against, though an Irish Peer, without any tryal by his Peers (See *Cooks* 4 Instit. p. 123, 124.) Therefore *a fortiori* this special Act of Parliament may subject *Irish Peers* to a tryal by a substantial *English* Jury in *England* for Treasons done in *Ireland*, since tryable for them here before its making even in the Marshals Court.

*See an exact Abridgement p. 567, 568. Cooks 4 Instit. p. 123, 124.

5ly. This Statute doth not simply take away the tryal of all Treasons committed in *Ireland*, from thence; only it makes them all tryable here, when the King, State and Parliament shall see just cause or occasion for tryal of them here, as now they do in these times of general rebellion there, when the Rebels are so predominant, and the times such, that no safe, fair, or indifferent tryal of this Traytor can be there had or expected. And seeing the

the Law and common reason will inform every man, that the King and State will never be at the cost and trouble to send for Traytors and Witnesses out of *Ireland* to try them here, but upon a most just occasion and urgent necessity, to prevent either a faiter or delay of Justice in case of horrid Treasons and Rebellions; And no Irish Peer who hath any loyalty in his heart, or reason in his head, will deem it a dishonor, or prejudice to the whole Irish Peerage in general, or the trayterous Peers sent hither to be tryed in particular, to be outed of a tryal by Irish Peers in such Cases of necessity, and expediency only; it being better and safer for this Realm and *Ireland* too, that these *native Irish Peers, who have been proved to break out into actual Rebellion in all* ages (as this Prisoners Ancestors have done as much or more than any, his * *Grandfather* being the first man that broke forth in *Tyrones Rebellion*) should be subject to tryals for the same by ordinary English Juries here, and outed of their Peerage, then that such Arch-Traytors and Rebels as the Prisoner and his Confederates are, (guilty of the effusion of many thousands of Protestants and *English* mens bloods) should escape uncondemned, or be executed by Martial law. And our Law in this Case, which concerns the safety of 2 Kingdoms at once, *will rather suffer a particular mischief*, especially to rebellious Peers, *than a general inconvenience to both* Realms, and all loyal Subjects in both.

* Cambdens Ireland, p. 111, 120, 121, 199.

6ly. Though the tryal of all English and Irish Peers by a legal indictment, presentment, and Jury of their Peers alone, and not by Martial-law or Commissioners themselves alone, be an essential fundamental Right and Privilege for the securitie of their lives and estates, which our Parliaments in all ages have been very curious to preserve, and not to alter; yet the Tryal of Peers by Peers alone (not by a Jury of other Freemen) for the most part (if rightly considered) is rather a meer punctilio of honor, than matter of real privilege or benefit to Peers; and by intendment of Law and common experienc, a fair and legal tryal by the oaths of 12 honest, substantial, indifferent English Gentlemen or Freeholders,

to

to whom the Prisoner may take all * sorts of lawfull challenges by Law, which shall be allowed, if there be any just cause of suspition of partiality, injustice, consanguinity, &c. besides his peremptory challenge of 35 *Jurors* without cause (which challenges * *Cook* affirms, shall not be admitted or granted in case of tryal by Peers) it being the usual antient (*a*) tryal in all Cases between the King and ordinary Subjects, between man and man, Peers and Commoners, both in all civil and criminal causes whatsoever, it is and will be every way as just, as beneficial to a Peer in point of Law as a Tryal by twelve Peers, *upon their Honours only*, (*b*) *without oath*. And the exchange only of the form of Tryal, by twelve indifferent *English* Gentlemen of quallity, upon their oaths, for twelve Irish Peers of English blood, nominated and appointed only by the King, or his (*c*) Lord Deputy of *Ireland*, upon their Honours without oath, in this case of necessity, can be no injustice, injury, or prejudice to the Irish Peers in general, nor yet to the Prisoner in particular: The rather, if we consider,

*See Stamf. l. 3. c. 7. 7 H. 7. 12. Brook Challenge 217. Fitzh. Stathams and Brooks Abridgements, and Ashes Table, title Challenge, *Cooks 3 Institutes, p. 27.

(a) See Fitzh. Brook, Ash. Title Jurors, Trya, Enquest,

(b) 1 H. 4. 2. 27 H. 8, 22. & 13 H. 8. 11, 12. Brook Treason 29, 33. 10 E. 4. 6. Cooks 3 Inst. p. 28, 29. 2 Inst. p. 49

(c) 2 Eliz. c. 1. & 6.

First, That every Indictment by which an English or Irish Peer is or can be tryed, must first be proved before a grand Jury of Commons (as this very Statute prescribes) and found by them upon *Oath*, not by a Jurie of Peers: which is a kind of preparatory trial of a Peer by Jury, without which there can be no proper tryal by Peers, as is resolved *Cooks* 3 Institutes, p. 28, 30, 31, 32. & 1 H 4. 1.

2ly. That in Cases of *Appeal* brought by a common person for murder, rape, robberie, or the like, and likewise in case of a *Premunire* against an English Peer, where his life is not brought into question; he shall not be tried by his Peers, but by an ordinary Jury as other men; Trial of Peers by Peers being onlie in cases of Indictments for Treasons or Felonies at the Kings sute, and no other, as is clear by the Statute of *Magna Charta*, c. 29. *Neither will* we *pass upon him, or condemn him, without the lawfull judgement of his Peers*, &c. the words onlie

of

of the King not of the Commons; In this our Books are expreſs in point, all cited in Sir *Edw. Cooks* 2 Inſtitutes on this verie Chapter of *Magna Charta cap.* 29. in his pleas of the Crown, or 3 Inſtit. c. 2. p. 30, 31. & 20 Ed. 4. 6. *b.* Now this caſe in queſtion concerning not onlie the King, but the whole Kingdome of *England* and *Ireland*, and thoſe manie thouſands of Common perſons whoſe innocent blood hath been, ſhed in *Ireland* by him and his Confederate Rebels crying out for vengeance and Juſtice againſt him without delay; he may thereupon be juſtly tried by an ordinary Jurie of Commons, as well as in Caſe of an Appeal of murder brought by a common perſon.

3ly. Peers of Parliament, even of this Realm, not by inherent Nobility and Birth right, but only in right of their Baronies, which they hold in *auter Droit*, as *Arch-Biſhops*, *Biſhops*, *Abbots*, *Priors* and the like, ſhall not be tried by their Peers for treaſons or felonies at the Kings ſute, but onlie by an ordinary Jurie, as *Archbiſhop Scroope of York*, *Cramner Arch-biſhop of Canterbury*, * *Adam de Orlton or Tarlton Biſhop of Hereford*, *Mark Biſhop of Carliſle*, *Fiſher Biſhop of Rocheſter*, and others were tried 3 *Ed.* 3. *f.* 6. *Kelwaies* Reports, *f.* 184. *Stamfords Pleas of the Crown*, *f.* 135. *Cromptons Juriſdiction of Courts*, *f.* 12. 19. *Halls Chron*, 6 *H.* 4. *f.* 25. *Coo.* 3 *Inſtit. f.* 36. Now if theſe verie Engliſh Peers to whom *Magna Charta* was immediatelie granted by name of *Arch-Biſhops*, *Biſhops*, *Abbots*, (being the firſt perſons mentioned in the Prologue and ch. 1. & 29 of this Charter,) ſhall be outed of their peerage, in theſe Caſes of Indictment at the Kings ſute, though within the very letter of *Magna Charta*, becauſe they are no Peers of *England* by blood or birthright, but in right of their Churches, then a *fortiori* Iriſh Peers ſhall be deprived of their Peerage by this ſpecial Act, who are not within the letter or intent of *Magna Charta*, never made for them, but for Engliſh

* Godwins Catalogue of Biſhops, p. 605, 606, 232, 233.

lish Noble blood. And if it be neither injustice, nor injurie, nor inconvenience, to deprive these Ecclesiastical English Peers of a trial by Peers in cases of Treason or felony at the Kings suite though within the letter of *Magna Charta*, and to try them by an indifferent Jurie of Freeholders; It cannot be reputed any injustice, injury prejudice, or inconvenience at all now to put this Irish Peer of his Peerage here, where he is no native Peer, for such an horrid Treason as this.

4ly. Irish Peers are no Peers at all in *England*, upon which account and reason if they commit Treason here they shall be tried by an ordinarie Jury; Therefore to try them onlie by Freeholders, not by Peers in *England*, can be no injurie nor dishonour to their Peerage, unless it were in *Ireland* where they are Peers; and yet have been seldome or never hitherto tried there by their peers as I have proved.

5ly. The verie Statutes of *Ireland* it self made by the Peers and Commons thereof to prevent manie mischiefs by Theeves, Murderers, and Rebells in that Realm, do deprive both the Lords & Commons there of any legal trial at all both for their lives and estates too, witness of the Statutes 28 H. 6. c. 1. 3 & 5 E. 4. c. 2. & expose them to the judgement, slaughter, plunder of particular men in some cases authorizing *all manner of men that find any theeves robbing, breaking up houses, by day or night, or going or comming to rob or steal, having no faithfull man of good name and fame in their company, in English apparel, to take and kill those* * *Theeves, and cut off their heads, (without enditment or jury) and seise their Goods, without any impeachment of the King, his Heirs, Officers, or any other, for which they are to receive a sum of mony from every Plow-land, and person of estate within the Barony where they shall slay and behead such Theeves.* And 25 H. 6. c. 4 & 5. *If any English men shall have any hair or beard upon his upper lip like the Irish, it shall be lawfull for every man to take their Goods, as Irish Enemies, and to ransome them as Enemies; And if any Irish*

* Though Peers,

Irish Enemy received to the Kings allegiance shall afterwards rob, ſpoyl, and deſtroy the Kings Liege people, it shall be lawfull for every Liege-man that may meet with him afterwards, to do with him, and his Goods and Chattels as to Enemies who were never Liege, and to ranſome them at their free will, without any impeachment of the Law. And Ch. 6. *If any men, except Knights & Prelates shall wear gilded Bridle, Peſtrels, or other harneys, that it shall be lawfull to every man that will, to take the ſaid man his horſe and harneſſe, and to poſſeſs the ſame as his own Goods, without endictment or legal tryal.* All which would be monſtrous in *England*. Therfore it is much more legal and juſt, and no injurie at all to try the Priſoner, an Arch-Rebel in *England*, in this time of war and combuſtion in *Ireland*, for his Treaſons there perpetrated, by an indifferent, honeſt, lawfull English Jury, upon an endictment found by the grand Inqueſt, than thus to kill, behead ſuch Malefactors in *Ireland*, and ſeiſe both them and their Goods as Enemies, and ranſome them at pleaſure without Tryal, Jury, or Endictment, and not only to indemnifie but reward thoſe that do it, by Laws there made by the English and Irish themſelves: which will anſwer all Objections, and wipe off the leaſt ſhadow of Injuſtice in this Caſe, and tryal.

The third Objection is this, That if Irish *Peers* had been within this Law, there being ſo many rebellions in *Ireland* ſince its enacting, we should have had ſome *Preſidents* of Irish *Peers* here tried by Jurie, ere this; But there is no ſuch *Preſident* extant; therefore certainlie Irish *Peers* for Treaſons perpetrated in *Ireland* are out of this Act. *Object.* 3.

To this I anſwer, 1. That no Iriſh Peers have been tried by their Peers in *Ireland* for treaſons ſince this Act, *ergo* they are within it.

2. That this Argument is merely fallacious and non concludant: for the reaſon why no Irish *Peers* have been tried here ſince this Law by vertue of it, is not becauſe they were not deemed within it, but for other reaſons.

1. Because most of the Irish *Peers* who have been in actual rebellion since this Law, were [a] *either actually slain in the wars, or fled the Kingdom, or else were received into grace, and pardoned before tryal upon their submissions*; or else attainted and *executed by Act of Parliament*, or *by Martial-law in Ireland.* And by these means onlie avoided their Trials here.

[a] See the Annals of Ireland, and Mr. Camb. in Ireland, p. 121 to 200.

2ly. Because some *Irish Rebels*, as great as *Magwire*, or anie of their *Peers* in power and estate, have been heretofore tried and executed for Treason in *England* by vertue of this Law; though brought over hither from *Ireland* against their wills; as *Orourke* and Sir *John Parrot* of old, and *Mac-Mahon* the last Term: and the Tryals of these three here are direct *Presidents* in point, and good warrant by this very Act for the Tryal also of this Irish *Peer*, as I have proved.

3ly. This Statute is not very antient, yet still in as full force as ever, and if this be the first *President* of an Irish *Peer* that came judicially in question here in *England*, to be tryed upon it since its making, it is no Argument he is out of this Law, but rather an Inducement to make him a leading *President* to those rebellious *Peers* of that Nation, who have been the *Ring-leaders* of the ordinary Commons there in this grand Rebellion, there being no *President*, Judgement, nor soild reason against it; Yea some Judgements in case of Irish Commons, and many unanswerable reasons for it.

Object. 4. The fourth Objection is, the opinion of the Book in *Dyer*, f. 360. 11. forecited, recited in *Cromptons Jurisdiction of Courts*, f. 23. a. and Mr. *St. Johns Argument at Law at* Straffords *Attainder*, p. 63. *That an Irish Peer cannot be tryed here in* England *for Treason done in* Ireland, *neither by his Peers, nor by a Jury*, because he is no Subject of *England.*

Answer. To this I have [b] already given an Answer, and shall here only adde. 1. That the only reason given in the

[b] Here p. 40, 41.

the Book hath been since several times adjudged to be no reason at all nor Law, by all the Judges of *England*, a Subject of *Ireland* being a * Subject to the King of *England* in all places, as is adjudged in *Calvins* Case, and that *Wrey* disclaimed any such opinion delivered by him as is there reported. Therefore the reason of this opinion being adjudged erroneous and no Law, the opinion it self grounded on it, must needs be so too. The rather, because the opinion there cited was upon a Case casually put and moved out of Court by way of discourse, without study or argument, and suddenly delivered only by *Dyer* and *Gerrard* (since *Wrey* disclaimed it) but not given upon any cause actually depending or debated and argued in Court. 2ly. That it is a full authority for me, both because it determines, there can be no Tryal of an Irish Peer by his Peers in *England* but only by a Jury; and that in *Ireland* it self, *Peers are not used to be tryed by Peers, but attainted by Act of Parliament*; Therefore an authority point-blank against the Prisoners plea. * See here p. 32, to 42.

The 5th Objection is *O ourks* Case; which in Judge *Andersons* own Book of Reports, is put thus *Whether* Orourk *an Irish Subject* (*and no Peer nor Baron of* Ireland) *might be tryed by this Act here in* England, *for Treasons committed in* Ireland? which words (*nient estant, un Peer ou Baron de* Ireland) in the putting of the Case seems to intimate, that in that Case the opinion of the Judges was, *that an Irish Peer was not within this Act.* *Object. 5.*

To which I shall return this brief Answer, That this clause, *not being a Peer or Baron in Ireland*, in the putting of that Case, was only a description of the quality of his person, he being no *Peer or Baron of that Realm*, not any point in or part of the Case, there being not one syllable in the whole debate or Argument of it, by way of admission or otherwise, that an Irish Peer was not within this Act: And in this very Case the *Answ.*

Judges resolved *the Book in* Dyer *to be no Law*, and *Wrey* disclaimed any such opinion of his therein reported, as Sir *Edward Cooks* Institutes on *Littleton, fol.* 261. *b.* records.

Object. 6. The 6th. Objection is this, (intimated in an Order of the *Lords House*) That this may much concern the Peers of *England*; For this Law for trying forein *Treasons* is enacted in *Ireland*; and so by colour of it *English Peers may be sent over into* Ireland *to be tryed there by a Jury of Irish Commoners, for Treasons done in* England, *as well as Irish Peers sent thence to be tryed by ordinarie Juries here in England for Treasons committed in* Ireland.

Answer. I answer, 1. That there is no such Law extant in *Ireland*, that I can find, among all their printed Statutes, so as this is a vain surmise.

But 2ly. if there were any such Law there, yet *England* being the supreme Realm to *Ireland*, may make Laws in the Parliament here to bind the *Irish Peers* and *Commons*, but the Parliament in *Ireland* being a* subordinate Realm to *England*, never yet did nor can make any Laws at all to bind any *English Peers* or Commons for things done in *England*, (untill the Rebels there shall be able to conquer *England*, which I hope they never shall) as we have conquer'd them. Therefore we need not fear any such obliging Laws of theirs, or the tryal of English Peers in *Ireland*. So as this vain fancy is quite out of Dores, and the Lords themselves upon conference with the Commons have been fully satisfied that this Case no waies concerneth the *Peers of England*, whose *Tryal by their Peers* is by direct proviso saved to them in this Act, and therefore cannot come in question, or be taken from them by pretence of any such Law established in *Ireland*; Whereupon they have *reversed their Order*, which seemed to give some colour for this Objection.

* See Crokes Rep. p. 264 511, 512.

Pat.

Pat. 48 H. 3. pars. 1. m. 8. I find this memorable Record. "Rex, &c. omnibus salutem. Cum "secundum consuetudinem hactenus in *Hibernia* "obtentam, Utlagati in Regno nostro *Angliæ* pro "Utlagatis in *Hibernia* haberi non consueverunt, & "*Gregorius le Sonner*, ratione Utlagariæ in ipsum "promulgatæ in Regno nostro *Angliæ* nuper captus "fuit in *Hebernia* & in *Angliam* reductus & impri-"sonatus; Nolumus quod fidelibus nostris *Hiber-"niæ* aliquod præjudicium ex hoc in posterum grave-"tur. In cujus, &c. Teste *Rege* apud *Turrim*, "London. 26 die *Junii*." If Englishmen outlawed in *England* could not by the Law and Custome of *Ireland*, be taken upon a *Capias Utlagatum* in *Ireland*, or reputed as out-lawed persons there, as this Patent resolves, much less can they there be tried for any Treasons acted in *England* by colour of this Law, nor can our English Peers be there tried for Treasons here by an Irish Jury.

A seventh Objection, which I have heard made by some, is as vain and absurd as the former, That if Irish Peers be within this Act for Treasons done in *Ireland*, then by the same reason Peers in *Scotland* might be sent for and brought into *England*, and there tryed by an ordinary Jury by vertue of this Law, for Treasons done in *Scotland*; which would be a great prejudice to the Peers of *Scotland*, and the privileges of that Kingdome. *Object. 7.*

I answer, 1. That this Act extends not to any Treasons of *Scots Lords or* Commons committed or acted in *Scotland*, and tryable there, though it reacheth to *Irish Lords* and *Ireland*. *Answer.*

1. Because this Act was made long before the *union* betwixt *England* and *Scotland*, by 1 *Iac.* c. 2, 3. *Iac.* c. 3, 4 *Iac.* c. 1. & 16 *Caroli*: whiles that *Scotland* was under the absolute and immediate power of its own

own Kings, and not of the Kings of *England*, and so it cannot extend to them.

* See Hov. p. 545, 546, 550. Walsingham. Hist. Angl. p. 48 to 56. Mat. Paris Hist. Ang. p. 417, 433, 666, 667, 29 E. 1. Rot. Claus. dors. 10. Claus. 33 E. 1. dors. 13. scedula claus. 34 E. 1. dors. 10. claus. 10 E. 3. dors. 9.

2ly. *Scotland*, although the * Kings of it have often *done homage to the Kings of* England, in antient times, as their Soveraign Lords) was still an absolute independant Kingdom in this respect of being subject only to & governed by its own *Parliaments*, and Laws. But not subordinate to nor governed by the Laws or Parliaments of *England*, which never bound them heretofore, nor now, as they did and do *Ireland*; their *Laws* and *Statutes* and *ours still continuing different*. Therefore this Act neither did nor could bind the *Scots* Peers or Commons in point of Tryal here for Treasons committed in *Scotland*, as it binds the Irish (still subject to our Laws and Parliaments) for Treasons done in *Ireland*.

* 1 Jac. c. 2. 3 Jac. c. 3. 4 Jac. 1.

3ly. The very *Acts* of *Pacification* between both Kingdoms & the solemn League and Covenant passed this Parl. here & in *Scotland* too, which do specially reserve the *Tryals of all Traytors and Delinquents of either Kingdom, to the Tryal and Judicatory only of their own Parliaments and Realms*) have for ever provided against this vain pretence, and secured not only all *Scotish* Peers but Commoners too against any Tryals here by vertue of this Act for Treasons done in *Ireland*; Therefore I shall give it no further Answer.

Object. 8. The last Objection I can think of is this, That in every Case of Treason or Felony new made by Statute, the Lords of Parliament in *England* shall have their Tryal by their *Peers* saved, notwithstanding the Statute provides not for it by express words; so that proviſoes *of Tryal by their Peers* inserted into them in such Cases, are but idle, and *ex abundanti*, because it is provided for both by the Common law and by *Magna Charta* it self, *c.* 29. and so was it adjudged in the case of the Lord *Hungerford* heretofore,

and

and in the *Earl of Caſtlehavens Caſe* of late for *Buggery*, upon the Statute of 25 *H.* 8. *c.* 6. *Stamfords Pleas of the Crown f.* 152, 153 & *Cromptons Iuriſdiction of Courts f.* 39. Therefore the Try- of Iriſh Peers by their Peers ſhall be likewiſe ſaved to them within this Act, though it be not expreſſed, as well as the Tryal by Peers is to Engliſh Peeers by expreſſe Proviſoe.

I anſwer, Firſt, that this rule holds generallie true in all Caſes of new Treaſons and Felonies where the offences only are made capital, or puniſhable according to the antient, uſual, and ordinarie proceedings of Law, and the manner of the Tryal of them left at large and not preciſelie limited how and by whom they ſhall be tryed; As they are in the objected Caſes upon the Statutes of 25 H. 8. c. 6. & 5 Eliz. cap. 17. concerning *Buggery*: where the words are, *That this Vice ſhall be adjudged Felony, and that ſuch order and form of Proceſs ſhall thereupon be uſed againſt the Offenders, as in Caſes of* Felony *at the Common law, and that the Offenders being thereof convicted by verdict, confeſsion, or Outlawry, ſhall ſuffer pain of death, &c.* which words without the leaſt contradiction, ſtand as well with Tryal of Peers who are guilty of it by their Peers alone, as of Commons by a Jury, they being both according to the *order of our Common law*, and a *verdict by Peers is as* properlie ſtiled a *verdict* in Law, as a verdict by Jurie, witneſſe 1 H. 4. 1. and *Cooks* 3 Inſtitut. ch. 2. p. 30. But in the Statute of 35 H. 8. there is no creation or introduction at all of any *New Treaſons*, but only an introduction of a *new form and way of Tryal* for Treaſons formerly made and declared ſuch, then done, or hereafter to be committed out of this Realm, and that new form of Tryal preciſely limited in all *Anſw.*

particulars, and especially enacted to be by an *ordinary Jury*, except onlie in Case of our *English Peers*, Therfore this Statute comes not at all within the Objection, because it particularlie defines the place where, the Judges before whom, the Juries by whom, with the whole form and manner how, such forein Treasons shall be tryed, with all other circumstances of the Tryal, and expresly prescribes; *That all* but English Peers indicted for *forein Treasons, shall be tryed by good and lawfull men of the Shire where the Kings Bench or Commissioners sit.* Therefore to alter this form of Tryal precisely prescribed by this Statute, by introducing a new Tryal by *Irish Peers*, is to run quite cross against, and elude, repeal this Statute, as I have argued and proved at large.

I have now quite done with my Argument of this new untroden Case, and I hope therein sufficiently manifested, that this Plea of the Prisoner is invalid, and such as ought to be over-ruled in point of Law: And therefore as he hath been sent for over from *Ireland* by the wisdome and Justice of our Parliament, and by the Lords, Justices, and Councel there transmitted hither to receive a just, and speedy Tryal at this Bar for his bloody Treasons, which there (in respect of the Rebels power, Tumults in that Realm) he could not conveniently undergo: So I humbly pray on the behalf of the *King*, *Kingdome*, *Parliament*, and our whole *English Nation*, to all which he hath been such a capital *Traitor* and *Enemy*, *that this Plea of his may presently be over-ruled*, *and himself brought to his speedy Tryal*, *Judgement and execution for his unparallel'd Treasons*, *and the blood of those many thousands of innocent* English Protestants *shed in* Ireland *upon this occasion*, which cries for Justice and Execution against him without

out further delay. The rather, because *nulli differemus Justiciam*, is one clause of that very Act of *Magna Charta, ca.* 29. which he hath pleaded in bar of his Tryal, of which I pray both he and the whole Kingdom may now enjoy the benefit, by his undelayed Tryal and execution too, in Case he shall be found guilty of the Treasons for which he stands indicted; of which there is little doubt, since so fully confessed by himself in a writing under his own hand, and we are ready to make them good against him, as we have already done against his Confederate *Mac-Mahon*, by the Testimony of a clowd of honorable pregnant witnesses, in case he shall deny it.

After two Arguments at the Bar on both sides of this Case, *Justice Bacon* argued it himself, and delivered his opinion and judgement against the Prisoners plea: that *though he be a Baron of* Ireland, *yet he was triable for his Treason by a* Middlesex Jury *in the Kings Bench, and outed of his Peerage*, by 35 *H.* 8. *c.* 2. Which Judgement was approved by this *Order* of both Houses of Parliament.

Die Lunæ 10 Febr. 1644.

Ordered by the Lords *and* Commons *in Parliament assembled, That the said* Houses *do approve of the judgment given by Master Justice* Bacon, *in over-ruling the Plea of the* Lord Magwire, *and of the manner of the Tryal by the Indictment of* High Treason *in the* Kings Bench: *And the Judge is hereby required to proceed speedily thereupon according to Law and Justice.*

John Brown *Cler. Parl.*
Henry Elsing *Cler. Parl. D. C.*

Upon which on Monday *Febr.* 10. 1644. he was brought from the *Tower of London* to the *Kings Bench*

Bar, & there arraigned; where putting himself upon his trial he challenged 23 of the Jury which appeared *peremptorily*; Whereupon a *Distringas* was awarded to the Sheriff of *Middlesex* to return *Quadraginta Tales* the next day; of whom he challenged 12 more peremptorily: And being tryed by twelve of the residue returned (against whom he had no legal exception nor challenge) he was upon his own *Confessions* and pregnant evidence of 15 Witnesses (Persons of Quality) *found guilty* of the *Treasons*, for which he was indicted; and thereupon *Febr.* 11. was adjudged *to be drawn to* Tyburn, *and there hanged by the Neck, and cut down alive, and then his Bowels to be taken out, and there burnt before his Face, his Head to be cut off, and his body to be divided into four Quarters, and then to be disposed as the Parliament shall appoint*: Which was accordingly executed the 20th. of *Febr.* Even so let all such perfidious bloody Traytors perish.

TO fill up the vacant pages of this Sheet, I shall annex this one Record, and also one Irish Act, being both very pertinent to my Argument.

Pat. 1 E. 1. m. 20. *Hibernia.*

Venerabili in Christo Patri eadem gratia *Midden* Episcopo, & Dilectis & fidelibus suis *Mauricio* filio *Mauricii*, Justiciario suo Hibern. et Magistro *Johanni* de *Saumford* Escaetori suo Hibern. salutem. Cum defuncto jam celebris memoriæ Domino *H.* Rege patre nostro (cujus animæ propicietur altissimus) ad nos Regni *Angliæ* gubernacul. et terræ Hibern. Dominium pertineant, ob quod *Prælati*, *Comites*, & *Proceres*, ac *Communitas Regni nostri* nobis tanquam

Do-

Domino ſuo ligio et Regi fidelitatis Juramentum & omnia alia quæ nobis ratione Coronæ & dignitatis Regiæ ab ipſis fieri & præſtari nobis, in abſentia noſtra, poterunt plenariè & ſine omiſsione aliqua prompto & libenti animo præſtiterint: Ac *Archiepiſcopi Epiſcopi, Abbates, Priores, Comites, Barones, Milites, libere tenentes, ac tota Communitas terræ noſtræ Hiberniæ nobis tanquam* * *Regi & Domino ſuo ligio conſimile ſacramentum fidelitatis præſtare teneantur.* Dedimus vobis *poteſtatem recipiendi nomine noſtro fidelitatem ipſorum.* Ita tamen quod ſi vos omnes intereſſe nequiveritis, tunc duo vel unus veſtrum qui præſens fuerit nichilominus *plenariam habeat poteſtatem recipiendi nomine noſtro fidelitatem ipſorum in forma prædicta.* Et ideo vobis mandamus quod *fidelitatem prædictam* nomine noſtro *recipiatis, prout melius videbitis expedire.* In cujus, &c. Dat. per manum *W. de Merton Canc.* apud *Weſtm.* VII die *Decembris.*

*Note.

33 *H.* 8. c. 1. made in *Ireland.*

The Stat. of Ireland, prin. Dublin 1621. p. 183.

An Act that the King and his Succeſſors, to be Kings of *IRELAND.*

FOraſmuch as the King our moſt gracious dread ſoveraign Lord, & his Graces moſtnoble progenitors Kings of England, have been Lords of this Land of Ireland, having all manner kingly juriſdiction, power, preeminences and authority royal belonging or appertaining to the royal Eſtate and Majeſty of a King, by the name of Lord of Ireland, where the Kings Majeſtie, and his noble Progenitors, juſtly and rightfully were, and of right ought to be Kings of Ireland, and ſo to be reputed, taken, named and called, and for lack of naming the Kings Majeſty and his noble Progenitors Kings of Ireland, according to their ſaid true and juſt Title, Stile and Name, therein hath been great occaſion that the Iriſhmen and Inhabitants

bitants within this Realm of Ireland have not been so obedient to the Kings Highness and his most noble Progenitors, and to their Laws, as they of right and according to their allegiance and bounden duties ought to have been. Wherefore at the humble pursute, petition, and request of the Lords spiritual and temporal, and other the Kings loving, faithfull and obedient Subjects of this Land of Ireland, and by their full assents, Be it enacted, ordained, and established by this present Parliament, That the Kings Highnesse, his Heirs and Successors Kings of England, be alwaies Kings of this Land of Ireland, and that his Majesty his heirs and Successors, have the name, stile, title and honor of King of this Land of Ireland, with all manner of honors, preheminences, prerogatives, dignities, and other things whatsoever they be, to the Estate, and Majesty of a KING appertaining or belonging: and that his Majesty, his Heirs and Successors be from henceforth named, called, accepted, reputed and taken to be Kings of the Land of Ireland: to have, hold and enjoy the said stile, title, majesty and honors of the King of Ireland, with all manner preheminence, prerogative, dignities, and all other the premises, unto the Kings Highnesse, his Heirs and Successors for ever, as united and knit to the Imperial Crown of England. And be it further enacted by authority aforesaid, That on this side the first day of July next comming, proclamation shall be made in all Shires within this Land of Ireland, of the tenour and sentences of this Act. And if any person and persons, of what estate, dignitie or condition soever they or he be, subject or resiant within this Land of Ireland, after the said first day of July by writing or imprinting, or by any exteriour Act or Deed, maliciously procure or do, or cause to be procured or done, any thing or things to the peril of the Kings Majesties most royal person, or maliciously give occasion by writing, deed, print, or act, whereby the

Kings

Kings Majesty his Heirs or Successors, or any of them might be disturbed or interrupted of the Crown of this Realm of Ireland, or of the name, stile, or title thereof, or by writing, deed, print or act, procure or do, or cause to be procured or done any thing or things to the prejudice, slander, disturbance, or derogation of the Kings Majesty, his Heirs or Successors, in, of, or for the Crown of this Realm of Ireland, or in, of, or for the name, title, or stile thereof, whereby his Majesty, his Heirs or Successors, or any of them might be disturbed or interrupted in body, name, stile, or title of Inheritance, of, in, or to the Crown of this Land of Ireland, or of the name, stile, title, or dignity of the same; that then every such person and persons, of what estate, degree or condition they be, subject or resiants within the said Land of Ireland, and their Aydors, Counsellors, Maintainers, and Abbetters therein, and every of them, for every such offence, shall be adjudged High Traytors, and every such offence shall be adjudged and deemed High Treason, and the Offendors, their Aydors, Counsellors, Maintainors and Abbettors therein, and every of them being lawfully convicted of any such offence by presentment, verdict, confession, or proofs, according to the customs and Laws of this said Land of Ireland, shall suffer pains of death, as in cases of High Treason, and also shall lose and forfeit unto the Kings Highness, and to his Heirs Kings of this Realm of Ireland, all such his Mannors, Lands, Tenements, Rents, Reversions, Annuities, and Hereditaments which they had in possession as owner, and were sole seised of in their own right, of, by, or in any title or means, or in any other person or persons had to their use of any estate of inheritance at the day of any such Treason and offences by them committed and done. And that also every such Offendor shall lose and forfeit to the Kings Highness and to his said Heirs, as well all such estates of freehold, and interest for years, of lands,

lands and rents, as all the Goods, Cattels and Debts, which they or any of them had at the time of their conviction or attaindour, of or for any such offences; saving alway to every person and persons, and bodies Politique, their Heirs, Successors, and Assigns, and to every of them, other than such persons as shall be so convicted or attainted, their Heirs and Successors, and all other claiming to their use, all such right, title, use, interest, possession, condition, rents, fees, offices, annuities, commons and profits, which they or any of them shall happen to have, in, to, or upon any such Mannors, Lands, Tenements, Rents, Reversions, Services, Annuities and Hereditaments, which so shall happen to be lost and forfeited by reason and occasion of any of the Treasons or Offences above rehearsed any time before the said Treasons or Offences committed or done.

FINIS.

Errata.

PAge 20. l. 4. r. *either*. p. 33. l. 15. r. *it, or rather that of* Pat. 6. Johan. Reg. m. 6. l. 33. r. *statuatur*. l. 35. dele *de* p. 39 l. 33. & 38. c. r. r. 2. p. 58. l. 23 should come in l. 25. before *authorizing*. p. 59. l. 8. r. *Peyrels*. p. 64. l. 25. Ireland r. *Scotland*.